

5  
DEC 31 1992  
OFFICE OF THE  
No. 92-466

---

In The  
**Supreme Court of the United States**  
October Term, 1992

---

LIGGETT GROUP INC.,  
now named Brooke Group Ltd.,  
*Petitioner,*  
vs.

BROWN & WILLIAMSON  
TOBACCO CORPORATION,  
*Respondent.*

---

On Writ Of Certiorari To The  
United States Court Of Appeals  
For The Fourth Circuit

---

JOINT APPENDIX  
VOLUME II, PAGES 274-547

---

PHILLIP AREEDA  
1545 Massachusetts Avenue  
Cambridge, Massachusetts  
02138  
(617) 495-3160  
*Counsel of Record*  
for Petitioner

GRIFFIN B. BELL  
KING & SPALDING  
191 Peachtree Street  
Atlanta, Georgia 30303  
(404) 572-4600  
*Counsel of Record*  
for Respondent

*(For Complete Appearances See Reverse Side Of Cover)*

---

**Petition For Certiorari Filed September 16, 1992**  
**Certiorari Granted November 16, 1992**

---

*Of Counsel for Petitioner*

CHARLES FRIED  
1545 Massachusetts Avenue  
Cambridge, Massachusetts  
02138  
(617) 495-4636

WILLIAM H. HOGELAND, JR.  
ANTHONY M. D'IORIO  
MUDGE ROSE GUTHRIE  
ALEXANDER & FERDON  
180 MAIDEN LANE  
New York, NY 10038  
(212) 510-7000

GARRET G. RASMUSSEN  
C. ALLEN FOSTER  
KENNETH L. GLAZER  
PATTON, BOGGS & BLOW  
2550 M Street, N.W.  
Washington, D.C. 20037  
(202) 457-6000

JEAN E. SHARPE  
BROOKE GROUP LTD.  
65 East 55th Street  
New York, NY 10022  
(212) 486-6100

JOSIAH S. MURRAY, III  
JAMES W. DOBBINS  
LIGGETT GROUP INC.  
300 North Duke Street  
Durham, North Carolina 27702  
(919) 683-8802

*Of Counsel for Respondent*

NORWOOD ROBINSON  
MICHAEL ROBINSON  
ROBINSON MAREADY LAWING  
& COMERFORD  
380 Knollwood Street  
Suite 300  
Winston-Salem, NC 27103  
(919) 631-8500

# EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

## TABLE OF CONTENTS\*

Page

### VOLUME I

Chronological List of Relevant Docket Entries ..... 1

#### Reprinted Docket Entries:

7/24/84                      Affidavit of T. E. Sandefur, Jr. .... 20

1/30/90                      Brown & Williamson Proposed Antitrust Jury Instructions ..... 24

3/2/90                      Jury Verdict Sheet ..... 27

3/20/90                      Judgment on the Verdict ..... 30

8/27/90                      Order and Judgment - Judge Frank W. Bullock, Jr. .... 34

#### Exhibits or portions thereof:

[undated]                      Comparison chart. "Theirs"/"Ours" Copy of cigarette packs ..... 36

August 11, 1981              Memorandum from A. Cagney to J. Dowd re: Franchise Distribution Report ..... 37

April 23, 1982              L&M Competitive Possibilities: Responses and Liabilities. Generic/Private Label Cigarettes ..... 39

1983                      B&W Domestic Competitive Analysis 1983 Update ..... 40

\* The decisions of the District Court and of the Court of Appeals are printed in the appendix to the petition for a Writ of Certiorari and have not been reproduced here.

## TABLE OF CONTENTS - Continued

	Page
August 8, 1983	Charts from B&W GPC Presentation ..... 41
August 31, 1983	Gary Tobacco Company Strategic Planning ..... 44
January 25, 1984	Memorandum from E. Parrack, Jr., to D. Johnston, C. Dunn, H. Roder, C. Heger, E. Kohnhorst, R. Sachs ..... 46
February 2, 1984	The Maxwell Report - Revised 1983 Year-End Sales Estimates for the Cigarette Industry..... 51
February 7, 1984	Memorandum from A. Diebold to C. Heger re: Generic Business ..... 53
February 9, 1984	B&W Generics Presentation..... 55
1st Quarter 1984	Handwritten Notes - T. Olges ..... 60
1st Quarter 1984	Generic Cigarette Category ..... 62
February 1984	Situation Analysis ..... 65
February 1984	L&M Agenda..... 80
March 9, 1984	B&W Generic Proposal ..... 81
March 9, 1984	B&W 1984 Strategic Plan and 10 Year Forecast..... 95
March 22, 1984	Memorandum from R. Blott to I. Hughes, T. Sandefur, J. Alar, cc: J. McDonough, C. Heger, D. Falk ..... 98

## TABLE OF CONTENTS - Continued

	Page
March 22, 1984	B&W Report on Generics Memorandum re: Eric Bruell Telex..... 101
April 26, 1984	Memorandum from D. Falk to E. Parrack re: "Black and White" and Private Label Offering..... 105
April 30, 1984	Note from I. Hughes with attached Telex re: RJR Doral Introduction..... 110
May 1, 1984	B&W Report on Generic "Black and White" and Private Label Offerings Versus Branded Generic Offering..... 112
May 2, 1984	B&W Memorandum from J. Hite to D. Falk re: Competitive Activity - Doral ..... 116
May 4, 1984	B&W Strategies for Economy Cigarettes ..... 120
May 15, 1984	B&W Generics Final Proposal..... 127
May 15, 1984	B&W Memorandum from T. Olges to L. Butler, D. Christensen, C. Middleton, A. Rozek, D. Bores, J. Tharaldson, G. Greenier re: Domestic Competitive Analysis ..... 157
May 17, 1984	B&W Memorandum from D. Christensen to R. Blott, cc: L. Butler, D. Falk re: Project Volume - Status..... 166

## TABLE OF CONTENTS - Continued

	Page
May 22, 1984	B&W Notes on Project Volume Task Force Meeting, 5/22/84..... 173
May 22, 1984	B&W Trading Profit Effect of Launching Generics, Prepared by C. Heger ..... 176
June 4, 1984	B&W (Heartland) Generic Cigarettes ..... 178
June 13, 1984	L&M Memorandum to: D. Hunt from C. Avery re: Q Seal Program..... 182
June 22, 1984	Handwritten Note from C. Jova and Letter from City Sales, Inc. to Heartland Tobacco Company ..... 185
July 2, 1984	L&M Press Release re: Lawsuit ..... 188
July 10, 1984	B&W Letter from G. Gratta to D. Christensen..... 189
July 13, 1984	Status Report: B&W's Generic Entries..... 192
July 18, 1984	L&M Press Release ..... 196
July 19, 1984	B&W Field Sales Notice Volume Rebate Offers..... 197
July 26, 1984	B&W Memorandum from A. Diebold to C. Heger re: Liggett Strategy in Regard to Generics..... 198
August 17, 1984	Generic Cigarette Pricing Summary..... 201

## TABLE OF CONTENTS - Continued

	Page
1984	L&M National Management Conference - Generic/Private Label Presentation..... 207
1985	1985 Operational Plans - Domestic Marketing ..... 234
February 20, 1985	Stride Promotion ..... 237
February 26, 1985	B&W Memorandum from D. Christensen to R. Blott, cc: L. Butler, H. Kerr, D. Dant re Generic versus Full Revenue Pricing Comparisons..... 238
March 5, 1985	Batus Letter from H. Frigon to Dr. I. Hughes (B&W) ..... 240
March 6, 1985	B&W Memorandum from R. Blott to T. Sandefur, cc: J. Alar, W. DeWitt, I. Hughes, C. Heger, B. Lowdenback re: Response to CPC Customers ... 242
March 21, 1985	B&W Memorandum from T. Sandefur to J. Alar re: Competitive Strategy Review..... 243
April 2, 1985	L&M Memorandum from B. Ruggiero to L. Browning, B. Daugherty, B. Dear re: Direct Account Business Presentations ..... 254
April 9, 1985	B&W Memorandum from T. Olges to J. Alar, T. Sandefur, R. Blott, W. Dewitt, C. Heger, B. Lowdenback, cc: B. Bacon, J. Wells re: Chairman's Advisory Committee IX ..... 256

## TABLE OF CONTENTS - Continued

	Page
April 15, 1985	B&W's <i>Executive Summary - Liggett Acquisition</i> ..... 260
April 19, 1985	B&W Memorandum from T. Sandefur to C. McCarty, H. Frigon re: Richland 250's National Launch and Proposed Generic Pricing Strategy ..... 262
June 21, 1985	L&M Memorandum from T. Winterhalder to All Sacramento Sales Reps..... 264
July 18, 1985	Letter from H. Frigon (Batus) to G. Dennis re: GPC contract ..... 267
July 23, 1985	(B&W) Richland Trade Press Briefing ..... 272
VOLUME II	
July 29, 1985	Handwritten Notes E. Par-rack..... 274
August 15, 1985	B&W Memorandum from B. Bacon to R. Blott, cc: L. Butler, T. Whitehair, T. Olges, C. Heger, T. Mooring, T. Wilson ... 277
October 1985	B&W 1986-1990 Corporate Plan..... 281
December 9, 1985	(L&M) Doral Competitive Entries Short and Long Term Strategy Recommendation ..... 284

## TABLE OF CONTENTS - Continued

	Page
January 8, 1986	B&W Addendum Position Paper Current Status of B&W's Generics by B. Bacon ... 287
February 3, 1986	The Maxwell Report - Revised 1985 Year-end Sales Estimates for the Cigarette Industry..... 290
June 16, 1986	(B&W) Mailgram - Price Change Announcement ..... 295
June 20, 1986	(L&M) Mailgram - Price Change Announcement ..... 297
December 4, 1987	(L&M) Mailgram - Price Change Announcement ..... 299
December 8, 1987	(L&M) Mailgram - Price Change Announcement ..... 301
1988	Sami/Burke - Private Label & Generic Analysis..... 303
June 16, 1988	(B&W) Mailgram - Price Change Announcement ..... 304
June 17, 1988	(L&M) Mailgram - Price Change Announcement ..... 306
July 28, 1988	Article - Durham Sun, 1st L&M Stockholder Session Brief; firm said stronger ..... 308
December 12, 1988	Pyramid Report - New Product Introduction ..... 312
January 27, 1989	The Maxwell Consumer Report 1988 Year End Sales Estimates..... 317

## TABLE OF CONTENTS - Continued

	Page
May 1989 U.S. Distribution Journal Article Pyramid Program Eyed.....	322
July 12, 1989 Summary Exhibit: Annual market share of generics 1980 - 1988.....	324
July 12, 1989 Summary Exhibit L&M Liggett & Myers generic cigarette (King Size) List Price Differential Between Branded Cigarettes and Generic Cigarettes May 1980 to June 1989.....	325
July 24, 1989 List Price for Cigarettes Branded & Generic 1981-89....	326
August 9, 1989 Summary of Documents Showing Liggett & Myers' Rebate Programs, for Broker Customers and B&W's Rebate Programs as Announced to Sales Personnel June 4 - July 20, 1984 .....	327
August 9, 1989 Summary of Documents Showing Liggett & Myers' Rebate Programs, for Broker Customers and B&W's Rebate Programs as Announced to Sales Personnel June 4 - July 20, 1984 .....	328
August 24, 1989 Handwritten Notes - A. Diebold on Generics.....	329

## TABLE OF CONTENTS - Continued

	Page
September 27, 1989 B&W Generic King Size List Price Differential Between Branded Cigarettes and Generic Cigarettes.....	330
October 3, 1989 Department of Justice Merger Guidelines Concentration Standards.....	331
October 3, 1989 U.S. Cigarette Sales Market Share and Concentration.....	332
October 4, 1989 Chart: Cigarette Industry Profitability .....	333
October 5, 1989 Summary Chart: B&W Generic Cigarettes Excess of Average Variable Costs Over Net Revenues for the Period July 1984 - December 1985 ....	334
October 5, 1989 Summary Chart: B&W Generic Cigarettes Excess of Variable Costs Per Carton Over Net Revenue Per Carton for the Period July 1984 - December 1985 .....	336
October 5, 1989 Summary Chart: B&W Generic Cigarettes Excess of Variable Costs Over Net Revenues for the Period July 1984 - December 1985 .....	338
October 5, 1989 Summary Chart: B&W Generic Cigarettes Excess of Variable Costs Per Carton Over Net Revenue Per Carton for the Period July 1984 - December 1985 .....	339

## TABLE OF CONTENTS - Continued

	Page
October 5, 1989 Chart: B&W Generic Cigarettes Excess of Variable Costs Over Net Revenues for the Period July 1984 - December 1985 .....	340
October 5, 1989 Chart: B&W Generic Cigarettes Excess of Average Variable Costs Per Carton Over Net Revenue Per Carton for the Period July 1984 - December 1985 .....	341
October 5, 1989 Chart: B&W Generic Cigarettes Excess of Variable Costs Over Net Revenues for the Period July 1984 - December 1985 .....	342
October 5, 1989 Chart: B&W Generic Cigarettes Excess of Average Variable Costs Per Carton Over Net Revenue Per Carton for the Period July 1984 - December 1985 .....	343
October 5, 1989 Summary Chart: Generic Cigarettes Calculation of B&W's Full Variable Margin for the Period July 1984 - December 1985 .....	344
October 5, 1989 Chart: Generic Cigarettes Calculation of B&W's Full Variable Margin Per Carton for the Period July 1984 - December 1985 .....	346

## TABLE OF CONTENTS - Continued

	Page
February 2, 1990 MSA Cigarette Industry Report - December 1989.....	348
February 2, 1990 1989 Liggett Group Inc. Annual Report .....	376
Excerpt of Trial Proceedings of: Court.....	381
(Jury Instructions; oral charge).....	767
Excerpt of Trial Testimony of: K. v. R. Dey.....	386
Excerpt of Trial Testimony of: H. Grant.....	402
Excerpt of Trial Testimony of: C. Eads.....	409
Excerpt of Trial Testimony of: T. Sandefur.....	432
Excerpt of Trial Testimony of: T. Olges.....	461
Excerpt of Trial Testimony of: D. Jackson.....	468
Excerpt of Trial Testimony of: L. Butler.....	478, 671
Excerpt of Trial Testimony of: W. Burnett.....	480
VOLUME III	
Excerpt of Trial Testimony of: W. Burnett - con't. ....	548
Excerpt of Trial Testimony of: B. Bacon.....	648, 694
Excerpt of Trial Testimony of: K. Elzinga.....	650, 712
Excerpt of Trial Testimony of: D. Mills.....	651
Excerpt of Trial Testimony of: T. Keller.....	663
Excerpt of Trial Testimony of: H. Higgins.....	689
Excerpt of Trial Testimony of: J. Winebrenner.....	755
Excerpt of Trial Testimony of: R. Ray.....	761
Jury Instructions: written charge.....	813

## KEY

In this Joint Appendix, brackets indicate text added by counsel to inform the Court of appropriate notations or other information not appearing on the face of the document itself. Where the date of a document has been derived by reference to its accompanying testimony, the citation (Tr. \_\_:\_\_) to such testimony has been included with the document's date.

## [Handwritten Notes]

29 July [1985]

STRATEGIC Planning Session I

8:30 a.m.

I.A./B.L./EEK/L.B./TAO

R.P. T.N.

TES/UP/RAI/U[Illegible]P/C.M.

- 4: copy generics letter to Ranng  
 - copy VFM price [Illegible] C.C.  
 - write UPM

New Requirement: M.A.P w/ dates for critical activity  
 - TRACKING MODE  
 more specifics on V.F.M.  
 segment participation [Illegible]

Section III:

guide lines p.3: 25% at op. cash flow + \$100mm  
 50% RONA  
 + T.P. real  
 incompatible with investment in new  
 products.

SECTION IV: changes since plan  
 focus on priorities up front in plan.

Ray: must be clear on level of detail required appears to  
 be focus on early years leads to detailed review/  
 critique of operating programs.

\*creates potential legal vulnerability

TES: start w/ mission statement:

provide consistent/projectable earnings growth for  
 B&W.

"Jump" "husbanding funds" / "conserve resources" = milking strategy.

[Illegible]: utilize available resources to develop participation of the "tobacco business."

deliver to [Illegible] cons./proj. earn gro.

how we do that should be up to us.

Ray: pricing [Illegible] emphasis detail ok/required for generics is particular: more detail than else where

New Products focus: need for rapid exploitation of proven concepts

L.B. Pricing is resegmenting market. B&W should participate in each element of recycling mission

RAB: not sure real price tiering will go beyond GENERIC - Full Price. There is no uniform Trade agreement on her price points [Illegible] store price differences exceed INTRA STORE PRICE TIERS.

10:00 CARL

[Illegible] pricing

[Illegible] rate

PRICING: 75¢ Jan/July each year vs. \$1.00 each in '85 reduced 25¢ based on tobacco pricing change. \*5.2% price increase vs. 3.9% inflation on [Illegible] agreed.

do we put in higher p.i. (\$1.00) & raise marketing expenses. (Risk taken only 75¢, cut expenses:

RAB: hold price increase differential in reserve to release only if higher price increase is realized.

25¢ differential - \$21 [Illegible]/yr '86

\*STAY w/ 75¢ PD

TIS: why not track with category past Liggett

PI: plan for \$1.50/m = 75¢ in Jan

75¢ in July

[Illegible] \$ price differential/reduce % spread.

---

MEMORANDUM

TO: R. A. Blott

CC: L. W. Butler C. J. Heger  
T. E. Whitehair T. J. Mooring  
T. Olges T. W. Wilson

FROM: B. E. Bacon

DATE: August 15, 1985

SUBJECT: 1986 DOMESTIC MARKETING GUIDELINES

To assist you in the budgeting process for 1986 Domestic Marketing Expenses, attached is a schedule which details the 1986 Preliminary Plan marketing that was included in the recent Executive Committee Strategic Review meetings. Also attached is a recap of the direction given and assumptions made in arriving at the preliminary 1986 marketing numbers based on the assumptions existing at that time.

Subsequently, decisions were made that delayed until 1986 the RICHLAND 100's introduction and reduced targeted 1986 Domestic Marketing expenditures by \$25 million.

In summary, the targeted 1986 Domestic Marketing expenditures of \$484 million are some \$44 million less than the 1986 amounts included in the 1985 Plan and \$27 million less than the amount included in the 1985 original Budget.

As relates to the review meetings scheduled for August 27 and 28, Marketing management should limit their

proposed spending numbers to no more than the aggregate amount of \$484 million. The specific guidelines, within these constraints, resides with you.

Please advise if you need any additional information.

/s/ B. E. B.

B. E. B.

/af

Attachments

[on this page handwritten  
notes indicated in italics]

\* \* \*

These plans are based on anticipated segment pricing.

<u>Pricing (M's)</u>		<u>1986</u>		<u>1987</u>	<u>Average For The Year</u> <u>1988</u>		<u>1989</u>		<u>1990</u>
Full Margin		\$32.54		\$33.98	\$35.42		\$36.87		\$38.32
RICHLAND	2*.55	<del>24.64</del>	25.59	<del>25.69</del>	2*.** <del>26.77</del>	2*.*3	<del>27.83</del>	28.**	<del>28.91</del>
Generics		21.05	**.*2	<del>22.54</del>	23.99		25.46		26.93
% Difference		24%		24%	24%		25%		25%
RICHLAND/Full Margin									
% Difference		35%		34%	32%		29%		30%
Generics/Full Margin									

The existence of a 30-35% gap between generics and full margin presents an opportunity for an additional, middle price point 15-20% below full revenue. This gap should be filled with branded mid-price products that can capture a significant portion of outflows from full revenue brands and offer, along with generics and branded generics, an economically acceptable alternative to quitting.

Specific plans include:

#### Generics

1. Manage segment growth and profitability by gradually reducing percent difference between generic and full revenue brands.
2. Enhance and develop GPC trademark to increase consumer brand loyalty and therefore:
  - a. Reduce vulnerability to competitive generics' pricing and promotion.
  - b. Provide a recognized and respected origin for a GPC mid-priced line extension.

<u>Variable Margin (net)</u>	<u>1986</u>	<u>1987</u>	<u>Average For The Year</u> <u>1988</u>	<u>1989</u>	<u>1990</u>
Full Margin	18.12	19.30	20.45	21.57	22.69
RICHLAND	9.09	9.9*	10.63	11.42	12.20
Generics	7.43	8.65	9.83	11.02	12.18

[\*=Illegible]

8/16/85

These plans are based on anticipated segment pricing.

\*Plan input

[on this page handwritten notes indicated in italics]

8/16/85 \*Received from [Illegible]

				<u>Average For The Year</u>					
<u>1985</u>	<u>Pricing (M's)</u>		<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>		
30.93	Full Margin		\$32.54	\$33.98	\$35.42	\$36.87	\$38.32		
23.17	RICHLAND	2*.55	<del>24.64</del>	25.59	<del>25.69</del>	<del>26.77</del>	<del>27.83</del>	28.**	<del>28.94</del>
19.42	Generics		21.05	**.*2	<del>22.54</del>	23.99	25.46		26.93
25%	% Difference RICHLAND/Full Margin		24%	24%	24%	25%	25%		25%
37%	% Difference Generics/Full Margin		35%	34%	32%	29%	30%		

The existence of a 30-35% gap between generics and full margin presents an opportunity for an additional, middle price point 15-20% below full revenue. This gap should be filled with branded mid-price products that can capture a significant portion of outflows from full revenue brands and offer, along with generics and branded generics, an economically acceptable alternative to quitting.

Specific plans include:

Generics

1. Manage segment growth and profitability by gradually reducing percent difference between generic and full revenue brands.
2. Enhance and develop GPC trademark to increase consumer brand loyalty and therefore:
  - a. Reduce vulnerability to competitive generics' pricing and promotion.
  - b. Provide a recognized and respected origin for a GPC mid-priced line extension.

		<u>Average For The Year</u>					
<u>1985</u>	<u>Variable Margin (net)</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	
.62	Full Margin Excluding Leaf Price Adjustments	18.12	19.30	20.45	21.57	22.69	
.89	RICHLAND	9.09	9.9*	10.63	11.42	12.20	
.65	Generics	<del>-7.43</del>	<del>-8.65</del>	<del>-9.83</del>	<del>-11.02</del>	<del>-12.18</del>	
		<del>***</del>	<del>-2.23</del>	<del>***</del>	<del>-3.***</del>	<del>-3.***</del>	
16	Generics (Excluding Rebates) in	4.32	5.32	6.29	7.26	8.20	

[\*=Illegible]

not a fair comparison

[LOGO]

B&amp;W

BROWN & WILLIAMSON  
TOBACCO CORPORATION

## 1986 - 1990 CORPORATE PLAN

RESTRICTED

OCTOBER 1985

REVISED JANUARY 198 [Illegible]

\* \* \*

Key Action Plans

## LOW-PRICED 20's

B&W's 1986 volume target is 14.1 billion units or 35.6% share of the segment which represents a 64% growth in volume for 1986 versus 1985's volume target of 8.6 billion units or 24.9% share of segment. To achieve this growth and improve segment profitability, plans are to:

- Increase generic prices by \$1.00/1.25/M in November 1985 and January 1986 and by \$1.00 in July 1986. Based on these price increases, and accounting for planned support, B&W anticipates a significant increase in trading profit.
- Build direct account, wholesaler and distributor customer base through a competitive rebate structure.
  - Effective January 1, 1986, introduce a rebate system based on total customer volume.
  - Combined with B&W's Direct Account Incentive Program and strategic use of consumer incentives, this offer is designed to yield the customer and

consumer base required to generate B&W's 14.1 billion unit volume objective within its Trading Profit goal.

- Use consumer incentives to pull target volume through distribution channels and gain additional retail distribution.
- Convert existing B&W customers to the GPC brand to take advantage of GPC's trade and consumer equity.
- Enhance the GPC trademark through label graphic and promotion material enhancement.
- Insure consumer awareness and retail availability through aggressive in-store signage and display.

#### MID-PRICED 20's

- Develop and start testing a mid-priced 20's product. "GPC Deluxe," first quarter of 1986.
  - Pending successful test results, a projectable test market will follow in the second quarter 1986 to permit a rollout decision.
-

\* \* \*

Pricing Estimates

<u>Pricing (M's)*</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
<u>Segment</u>						
Full Margin	\$30.93	\$32.97	\$34.54	\$36.19	\$37.91	\$39.65
RICHLAND	22.93	24.64	26.08	27.33	28.65	29.96
Low-Priced 20's	19.18	21.56	23.20	24.90	26.69	28.48
% Difference	25%	25%	24%	24%	24%	24%
RICHLAND/Full Margin						
% Difference	38%	35%	33%	31%	30%	28%
Low-Priced 20's/Full Margin						

The existence of a 28-38% gap between low-priced 20's and full margin presents opportunities for additional, middle price points 15-20% below full revenue. This gap could be filled with branded mid-price products that can capture a significant portion of outflows from full revenue brands and offer economically acceptable alternatives to quitting.

Based on above estimated pricing, the following projects potential contribution margins (pre-specific brand advertising).

<u>Variable Margin (M's)*</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
Full Margin	\$16.90	\$19.00	\$20.24	\$21.60	\$23.04	\$24.46
RICHLAND	8.31	9.89	10.77	11.68	12.64	13.60
Low-Priced 20's (incl. rebates)	1.69	4.72	5.80	7.03	8.34	9.66
% Difference	51%	48%	47%	46%	45%	44%
RICHLAND/Full Margin						
% Difference	90%	75%	71%	67%	64%	61%
Low-Priced 20's/Full Margin						

Although popular price branded products produce a higher gross margin rate (i.e., 54-62%), value products provide substantial rates of return over the plan period (e.g., RICHLAND 35-45%, Generics 9-34%) which are greater than those enjoyed in most other industries.

\*Pricing and margin estimates are based on B&W brands' projected financial performance over the plan period.

[In Evidence 12/9/85]

## DORAL COMPETITIVE ENTRIES

SHORT AND LONG TERM  
STRATEGY RECOMMENDATION

\* \* \*

IMPACT ON CONSUMER. . . GENERICS

- INCREASES AWARENESS LEVEL OF PRICE-BRAND CATEGORY
- USERS WILL BE OFFERED A CHOICE
- NON-USERS WILL BE OFFERED A "BRANDED" PACKAGING ALTERNATIVE
- DORAL AND OTHER COMPETITIVE ENTRIES WILL ATTRACT FROM THE POOL OF POTENTIAL GENERIC SMOKERS
- RATE OF NEW TRIAL ON GENERIC COULD DECLINE AS THE NUMBER OF COMPETITIVE ENTRIES INCREASE
- COULD EVENTUALLY LEAD TO INCREASED NEGATIVE QUALITY PERCEPTIONS OF GENERICS DUE TO SIMPLE PACKAGING

\* \* \*

TOTAL NET NET DORAL ADVANTAGE OVER  
GENERIC/PRIVATE LABEL

<u>CASES PER QTR</u>	<u>GENERIC BROKER</u>	<u>FRAN- CHISE DIST.</u>	<u>100MM PR. LABEL</u>	<u>50MM PR. LABEL</u>
0-99	-.082	+.018	-.013	-.043
100-199	-.102	-.002	-.033	-.063
200-299	-.152	-.052	-.083	-.113
300-399	-.172	-.072	-.103	-.133
400-499	-.192	-.092	-.123	-.153
500+	-.212	-.082	-.143	-.173*

- DORAL'S ADVANTAGE OVER OUR PRICING AFTER DISCOUNTING TERMS AND ALLOWANCES RANGES
  - FROM 8.2¢ TO 21.2¢ ON OUR BROKER BRANDS
  - FROM 1.8¢ TO 8.2¢ ON FRANCHISED BRANDS
  - FROM 1.3¢ TO 14.3¢ ON 100 MM PRIVATE LABEL BRANDS
  - FROM 4.3¢ TO 14.3¢ ON 50MM PRIVATE LABEL BRANDS
- FOR 50MM PRIVATE LABEL CUSTOMERS RECEIVING 3¢ PER CARTON COMMISSION
- THE RANGE OF DORAL'S ADVANTAGE IS FROM 4.3¢ TO 14.3¢ PER CTN.

\* \* \*

RECOMMENDATION

- ALTERNATIVE VII

RATIONALE

- THIS RECOMMENDATION IS AGGRESSIVE.
- THIS RECOMMENDATION BEATS COMPETITIVE TERMS AND COMPETITIVE ALLOWANCES OF DORAL BRAND FOR ALL BROKER CUSTOMERS.
- WOULD STRENGTHEN OUR LEADERSHIP AND INNOVATIVE STATURE AMONG ALL ACCOUNTS.
- WOULD PUT ALLOWANCES "DIRECTLY INTO THE HANDS" OF ALL ACCOUNTS; PHYSICALLY RECEIVING PAYMENT BY CHECK RECOMMENDED OVER CREDIT MEMOS.

IMPLEMENTATION

- CORPORATE ACCOUNTS CAN BE CONVINCED OF THE EXTREME URGENCY THAT ALL CASH PAYMENTS BE MADE BY US DIRECTLY TO CUSTOMERS AND DIVISIONS BY SHIP POINT ON A QUARTERLY BASIS. IN THIS CASE, LUMP SUM PAYMENTS TO HEADQUARTERS OR A CENTRAL LOCATION WOULD BE TREATED ONLY AS AN EXCEPTION.
- THIS RECOMMENDATION PAVES THE WAY FOR FULL FLAVOR GENERIC AND PRIVATE LABEL CIGARETTES AND FUTURE BRAND EXTENSIONS.

As further information this addendum compares Brown & Williamson's actual performance on GENERICS with our assessment of the performance (sales & Trading Profit) of DORAL over the same period (July, 1984 - December, 1985). It should be noted that DORAL was converted to GENERIC pricing in the spring of 1984.

(Quantities In Billions, Dollars in Millions)

	July-Dec. 1984		1985		TOTAL	
	<u>B&amp;W*</u> <u>GENERICS</u>	<u>DORAL</u>	<u>B&amp;W*</u> <u>GENERICS</u>	<u>DORAL</u>	<u>B&amp;W*</u> <u>GENERICS</u>	<u>DORAL</u>
Volumes	2.2	1.8	7.9	6.8	10.1	8.6
Variable Margin - After Mfg. Overheads	\$9.6	\$8.0	\$40.3	\$31.0	\$49.9	\$39.0
Rebates, Adv., Stickering, Fixtures, Selling, Etc.	10.0	7.6	41.9	36.2(a)	51.9	43.8
Trading Profit Loss	<u>\$&lt;.4&gt;</u>	<u>\$ .4</u>	<u>\$&lt;1.6&gt;</u>	<u>\$&lt;5.2&gt;</u>	<u>\$&lt;2.0&gt;</u>	<u>\$&lt;4.8&gt;</u>

• Brown & Williamson Generics

(a) We estimate \$20.3 for \$1 off stickering, \$6.0 second half advertising, \$6.2 rebates and \$3.7 for fixtures.

[Handwritten Notes]

(B)

(C) See Attached [Handwritten Notes End]

The 1985 exit share (October - December) for the total of B&W's GENERIC volumes is approximately 2.0% (50/50 GPC - Black & White/Private Label) versus DORAL's exit share of approximately 1.5%.

B. E. B.

1/8/86

See attached [Handwritten Note]

\* \* \*

[Handwritten Notes]

10,900,000

905,500

X

(B) We estimate that the heavy spending will continue into 1986. The annualized costs for 1986 therefore would be as follows: \$48 million for stickering @ \$1.00 off, \$9 million for advertising, \$9.7 million for rebates, \$6 million for fixtures

(C) Information provided from wholesale accounts has shown us that Black and White product will outsell Doral by a 4 to 1 ratio when Doral product is not stickered.

FURMAN SELZ MINGER DIETZ & BIRNEY

Telex	Incorporated	Telephone
Cable	230 Park Avenue	Trading
[Illegible]	New York 10169	[Illegible]

Industry Comment

The Maxwell Report

---

Revised 1985 Year-end  
Sales Estimates for the  
Cigarette Industry

John C. Maxwell, Jr.  
(212) 309-8468

February 3, 1986

[Illegible]

\* \* \*

#### 1985 YEAR END INDUSTRY OVERVIEW

In the face of considerable uncertainty, the cigarette industry ended the year on a strong note. Shipments were 595 billion units, a decline of only 0.8% versus the 600 billion in 1984. In the final months of 1985 cigarette sales were erratic due to swings in trade inventories related to the possible sunseting of the \$0.16 per pack Federal Excise Tax. This tax, which had been levied as of January 1983, was scheduled to fall back to the previous \$0.08 level on October 1, 1985. However, the higher tax rate was extended by Congress several times during the last months of 1985 with the latest extension being to March 15, 1986. We believe the \$0.16 tax will be maintained. At the end of December, the Industry instituted a price increase. The counterbalancing effect of these two events meant high trade inventory accumulation.

Looking at the industry's dynamics, while the adult population has been growing slightly above 1% annually, smoking incidence and consumption per day continue to decrease marginally. The overall impact is a reduction in consumer sales. Retail consumer sales were down about 1% from last year's level, and this rate of decline is expected to continue in the near term.

The foremost marketplace development of 1985 and the past several years has been the expansion of the price value category. It is composed of: all the generic priced entries, including, "no frills" and score brands from Liggett and Brown & Williamson, and brands such as Reynolds' Doral; the mid-priced brands, e.g. Liggett's Stride, and the value priced 25's - Reynolds' Century, B&W's Richland, and Philip Morris' Players Lights 25's, Century is just going to 10 packs per carton rather than 9 at the same price, in line with the Richland price structure. For the full year, the collection of price value brands had a share increase from 5.5% to 7.3%.

#### ANALYSIS OF COMPANY SHARE BY PRICE SEGMENT

	<u>Full Priced</u>	<u>Price Value</u>	<u>Total Market</u>
Philip Morris	38.5	2.3	35.9
R.J. Reynolds	32.1	25.9	31.6
Brown & Williamson	10.9	24.3	11.9
Lorillard	8.8	-	8.1
American	8.1	-	7.5
Liggett	1.6	47.5	5.0
Total	100.0	100.0	100.0
Market Share	92.7	7.3	100.0

Among the top selling brands, Marlboro and Newport turned in strong performances. Marlboro, the number one brand, improved its market share to 22.4% up 0.9 share points over last year. It was helped by the national distribution of Marlboro 25's. Likewise, Newport hit a new high of 3.4%, up 12% ahead of last year by 0.4% share points. At current rates it should by pass [sic] Pall Mall for the ninth position this year. Virginia Slims also showed

\* \* \*

**BROWN & WILLIAMSON TOBACCO CORP.  
FULL-YEAR BRAND SALES AND MARKET SHARES**

	Sales (Bil. Units)			Market Shares (%)				
	1984	1985	Change	1985	1984	1983	1982	1981
<b>Kool</b>								
85s (16)	22.89	21.44	(6.3)	3.6	3.8	3.9	4.*	4.8
Hard Box (16)	1.99	2.29	15.1	0.4	0.3	0.3	.*	0.3
100s (16)	7.74	7.25	(6.3)	1.2	1.3	1.3	1.4	1.5
Milds (11)	5.10	5.07	(0.6)	0.8	0.9	0.9	0.9	1.0
Milds Longs (12)	0.76	0.88	-	0.1	0.1	0.1	.*	0.1
Super Lights Kings (7)	-	-	-	-	-	-	-	0.3
Super Lights 100s (9)	-	-	-	-	-	-	-	0.3
Light Kings (9)	1.08	1.01	(6.5)	0.2	0.2	0.2	0.4	-
Light 100s (10)	1.02	0.94	-	0.2	0.2	0.2	0.*	-
Ultra Kings (2)	0.63	0.58	-	0.1	0.1	0.1	0.1	-
Ultra 100s (5)	0.71	0.66	-	0.1	0.1	0.1	0.*	-
<b>Total</b>	<u>41.92</u>	<u>40.12</u>	(4.3)	<u>6.7</u>	<u>7.0</u>	<u>7.1</u>	<u>8.2</u>	<u>8.3</u>
<b>Raleigh*</b>								
85s (16)	3.13	2.68	(14.4)	0.5	0.5	0.6	0.7	0.8
100s (16)	2.14	1.86	(13.1)	0.3	0.4	0.4	0.4	0.4
Lights (8)	0.76	0.61	-	0.1	0.1	0.1	0.2	0.2
Lights Longs (8)	0.78	0.63	-	0.1	0.1	0.1	0.2	0.2
<b>Total</b>	<u>6.81</u>	<u>5.78</u>	(15.1)	<u>1.0</u>	<u>1.1</u>	<u>1.2</u>	<u>1.5</u>	<u>1.6</u>
<b>Viceroy</b>								
85s (14)	4.03	3.61	(10.4)	0.5	0.7	0.7	0.9	0.9
100s (16)	1.33	1.17	(12.0)	0.2	0.2	0.2	0.3	0.3
Rich Lights (8)	0.50	0.40	-	0.1	0.1	0.1	0.1	0.2
Rich Lights Longs (9)	0.56	0.43	-	0.1	0.1	0.1	0.1	0.1
<b>Total</b>	<u>6.42</u>	<u>5.61</u>	(12.6)	<u>0.9</u>	<u>1.1</u>	<u>1.1</u>	<u>1.4</u>	<u>1.5</u>
<b>Belair*</b>								
85s (*)	2.45	2.13	(13.1)	0.4	0.4	0.4	0.5	0.6
100s (*)	2.12	1.83	(13.7)	0.3	0.4	0.4	0.5	0.5
<b>Total</b>	<u>4.57</u>	<u>3.96</u>	(13.3)	<u>0.7</u>	<u>0.8</u>	<u>0.8</u>	<u>1.0</u>	<u>1.1</u>
<b>Barclay</b>								
85s (1)	1.99	1.61	(19.1)	0.3	0.3	0.4	0.5	0.5
100s (3)	1.36	1.04	(23.5)	0.2	.*	.*	.*	.*
Box (1)	0.54	0.49	-	0.1	.*	.*	.*	.*
Menthol 85s (1)	0.32	0.26	-	-	.*	.*	.*	.*
Menthol 100s (3)	0.35	0.27	-	-	.*	.*	.*	.*
<b>Total</b>	<u>4.56</u>	<u>3.67</u>	(19.5)	<u>0.6</u>	<u>.*</u>	<u>.*</u>	<u>.*</u>	<u>.*</u>
<b>Richland</b>								
85s (1)	0.31	1.15	-	.*	-	-	-	-
Menthol 85s (3)	0.20	0.24	-	.*	-	-	-	-
Lights 85s (**)	0.01	0.35	-	.*	-	-	-	-
<b>Total</b>	<u>0.52</u>	<u>1.74</u>	-	<u>.*</u>	-	-	-	-
Generics	2.17	7.36	61.3	1.*	.*4	-	-	-
All Others	0.37	0.12	-	-	-	.*	-	-
<b>TOTAL FILTER</b>	<u>67.34</u>	<u>69.36</u>	<u>4.2</u>	<u>.*</u>	<u>.*1</u>	<u>.*</u>	<u>.*</u>	<u>.*</u>
Raleigh (King (24)	0.57	0.52	-	.*	.*	.*	.*	.*
Kool (Regular) (19)	0.38	0.36	-	0.1	0.*	.*	.*	.*
<b>TOTAL DOMESTIC</b>	<u>67.99</u>	<u>70.74</u>	<u>4.0</u>	<u>11.9</u>	<u>11.*</u>	<u>11.5</u>	<u>.*</u>	<u>14.*</u>
Filter % of B&W Total	98.6%	98.3%	-	98.*%	98.6%	98.*%	.*%	38.6%

[\* = Illegible]

## LIGGETT GROUP, INC.

## ESTIMATED FULL-YEAR BRAND SALES AND MARKET SHARES

	Sales (Bil. Units)			Market Shares (%)			
	1984	1985	Change	1985	1984	1983	1982
Generics							
85s (14)	9.11	7.17	(21.3)%	1.2	1.5	1.2	0.4
100s (14)	9.34	8.16	(12.6)	1.4	1.6	1.1	0.3
Menthol 85s (14)	2.56	2.09	(18.4)	0.4	0.4	0.3	0.1
Menthol 100s (14)	2.90	2.63	(9.3)	0.4	0.5	0.3	0.1
Total	<u>23.91</u>	<u>20.05</u>	<u>(16.1)</u>	<u>3.4</u>	<u>4.0</u>	<u>2.9</u>	<u>0.9</u>
L&M							
85s Soft Pack (14)	2.40	2.09	(12.9)	0.4	0.4	0.5	0.5
85s Hard Pack (14)	0.05	0.04	-	-	-	-	-
100s (14)	0.69	0.59	-	0.1	0.1	0.1	0.2
Lights (8)	0.23	0.16	-	-	-	0.1	0.1
Total	<u>3.37</u>	<u>2.88</u>	<u>(14.5)</u>	<u>0.5</u>	<u>0.5</u>	<u>0.7</u>	<u>0.8</u>
Eve							
Slim Lights (13)	0.31	0.19	-	-	0.1	0.1	0.2
Menthol 100s (13)	0.21	0.12	-	-	-	-	0.1
120s (14)	1.02	1.05	2.9	0.2	0.2	0.1	-
Menthol 120s (14)	0.68	0.69	-	0.1	0.1	0.1	-
Total	<u>2.22</u>	<u>2.05</u>	<u>(7.7)</u>	<u>0.3</u>	<u>0.4</u>	<u>0.3</u>	<u>0.2</u>
Lark							
85s (14)	0.51	0.37	-	0.1	0.1	0.1	0.3
100s (15)	0.26	0.19	-	-	-	0.1	0.1
Lights 85s (13)	0.61	0.58	-	0.1	0.1	0.1	-
Lights 100s (14)	0.42	0.41	-	0.1	0.1	0.1	-
Total	<u>1.80</u>	<u>1.55</u>	<u>(13.9)</u>	<u>0.3</u>	<u>0.3</u>	<u>0.4</u>	<u>0.4</u>
All Others:	0.15	0.87	-	0.1	-	-	0.3
TOTAL FILTER	31.45	27.40	(12.9)	4.6	5.2	4.3	2.4
Chesterfield							
King* (22)	2.14	1.91	(10.7)	0.3	0.4	0.3	0.4
Regular* (17)	0.35	0.30	-	0.1	0.1	0.1	0.1
TOTAL DOMESTIC	33.94	29.61	(12.8)	5.0	5.7	4.7	2.9
Filter % of Lig. Total	92.7%	92.5%		92.5%	92.5%	92.5%	96.5%

\*Couponed Cigarettes

\*Decade's Sales are Included in All Others.

Includes unsaleable & promotional goods.  
Excludes International military sales.

	1984	1985
Total Consumption	600.17	595.14
Total Production	597.80	588.00
Change in Inventory	<u>2.37</u>	<u>7.14</u>
[*=Illegible]		(0.8)%
		(1.6)
		-

BROWN WILLIAMSON  
TOBACCO CO  
BOX 35090 09 SALES ADMIN.  
LOUISVILLE KY 40232

Western Union  
Mailgram (SEAL)

4-037345U167033 06/14/86 ICS AT21762 NYAD  
02189 MLTN VA 06/16/86 38

MODERN TOB CO INC  
7 GRACE CHURCH ST  
PORT CHESTER NY 10573

EFFECTIVE WITH SHIPMENTS OF JUNE 23, 1986, THE LIST PRICE OF OUR KING SIZE FILTER AND REGULAR SIZE BRANDS (WITH THE EXCEPTION OF RICHLAND KINGS) IS INCREASED BY \$.25 PER THOUSAND (FROM \$34.15 PER THOUSAND TO \$34.40 PER THOUSAND), AND THE LIST PRICE OF RICHLAND KINGS IS INCREASED BY \$.20 PER THOUSAND. SINCE INVOICE PRICES FOR RICHLAND VARY BY LOCALITY DUE TO STATE AND LOCAL TAX DIFFERENTIAL ADJUSTMENTS, WE ARE SENDING YOU YOUR NEW RICHLAND KINGS PRICE IN A SEPARATE LETTER.

OUR MAILGRAM OF JUNE 12, 1986, STATED THAT AFTER YOU HAVE ORDERED ONE AVERAGE WEEK'S SUPPLY, BY BRAND STYLE, FOR SHIPMENT DURING THE WEEK OF JUNE 16, 1986, YOU MAY PURCHASE AND RECEIVE 200% OF AN AVERAGE WEEK'S SUPPLY, BY BRAND STYLE, DURING THE WEEK OF JUNE 23, 1986, BASED ON THE OLD PRICE. THIS ENTITLEMENT REMAINS IN EFFECT. WE WILL INCLUDE IN THE CREDIT MEMO COVERING THE DIFFERENCE BETWEEN NEW AND OLD PRICE, THE ADDITIONAL \$.25 PER THOUSAND INCREASE (\$.20 FOR RICHLAND KINGS).

GENERIC/GPC/PRIVATE LABEL

EFFECTIVE WITH SHIPMENTS OF JUNE 30, 1986, THE LIST PRICE FOR OUR KING SIZE FILTER GENERIC/GPC/PRIVATE LABEL CIGARETTES IS INCREASED BY \$.25 PER THOUSAND. AS STATED IN OUR JUNE 12, 1986, MAILGRAM, YOU MAY PURCHASE 150% OF AN AVERAGE WEEK'S SUPPLY FOR SHIPMENT EACH OF THE WEEKS OF JUNE 16, 1986, AND JUNE 23, 1986, BASED ON THE CURRENT INVOICE PRICE OF \$19.75 PER THOUSAND FOR KING SIZE FILTER AND \$21.00 PER THOUSAND FOR 100MM AND KING SIZE NON-FILTER STYLES. BEGINNING WITH SHIPMENTS OF JUNE 30, 1986, OUR GENERIC/GPC/PRIVATE LABEL PRICES WILL BE \$21.00 PER THOUSAND FOR KING SIZE FILTER AND \$22.25 PER THOUSAND FOR 100MM AND KING SIZE NON-FILTER STYLES.

THANK YOU FOR YOUR CONTINUED COOPERATION IN THE MARKETING OF OUR PRODUCTS.

BROWN & WILLIAMSON  
TOBACCO CORPORATION

20112 EST  
MGMCOMP

---

LIGGETT & MYERS  
DURHAM NC 27702 20AM  
1-222512U171023 06/20/86 ICS JA16614  
22677 MLTN VA 06/23/86 JN 41196

Western Union  
Mailgram (SEAL)  
RALB

W. S. REGELE  
LIGGETT & MYERS TOBACCO CO.,  
WEST MAIN & FULLER STREETS  
DURHAM, N. C. 27702

RECEIVED  
JUN 20 1986  
W. S. REGELE

JUNE 20, 1986

TO OUR VALUED CUSTOMERS:

EFFECTIVE WITH SHIPMENTS MADE JUNE 24, 1986 AND THEREAFTER THE LIST PRICE OF OUR BRANDED REGULAR SIZE AND KING SIZE FILTER CIGARETTES WILL BE INCREASED BY TWENTY-FIVE CENTS (\$.25) PER THOUSAND CIGARETTES; FROM \$34.15 PER THOUSAND TO \$34.40 PER THOUSAND, SUBJECT TO OUR REGULAR CREDIT TERMS.

GENERIC AND PRIVATE LABEL CIGARETTES

EFFECTIVE JULY 01, 1986, THE LIST PRICE FOR 100MM STYLES OF GENERIC AND PRIVATE LABEL CIGARETTES MANUFACTURED BY LIGGETT & MYERS TOBACCO COMPANY WILL BE INCREASED ONE DOLLAR TWENTY-FIVE (\$1.25) PER THOUSAND CIGARETTES INSTEAD OF ONE DOLLAR FIFTY CENTS (\$1.50) PER THOUSAND CIGARETTES FOR 100MM STYLES AS STATED IN OUR MAILGRAM OF JUNE 13, 1986. THE NET EFFECT IS THAT ALL GENERIC/PRIVATE LABEL BRANDS WILL INCREASE \$1.25 PER THOUSAND CIGARETTES EFFECTIVE JULY 1, 1986.

ALL OTHER STATEMENTS MADE IN OUR MAILGRAM  
DATED JUNE 13, 1986, REMAIN UNCHANGED.

WE THANK YOU FOR YOUR CONTINUED COOPERA-  
TION IN THE MARKETING OF ALL OUR PRODUCTS.

LIGGETT & MYERS TOBACCO COMPANY  
DURHAM, NORTH CAROLINA 27702  
1719 EST

MGMCOMP MGM

---

BROWN WILLIAMSON  
TOBACCO CO  
BOX 35090 SALES COMM (09)  
LOUISVILLE KY 40232

Western Union  
Mailgram (SEAL)

1-088445U338025 12/04/87 ICS AT21762 LLVC  
02139 MLTN VA 12/04/87 JN82538

H T HACKNEY CO  
P O BOX 399  
SOMERSET KY 42501

TO OUR CUSTOMERS:

EFFECTIVE AT THE CLOSE OF BUSINESS TODAY,  
DECEMBER 4, 1987, THE LIST PRICES OF OUR CIGA-  
RETTE BRANDS ARE INCREASED AS FOLLOWS:

- FALCON LIGHTS AND RICHLAND 20'S  
(WHERE AVAILABLE) - \$2.50 PER THOU-  
SAND
- RICHLAND 25'S AND KIM 25'S (WHERE  
AVAILABLE) - \$1.60 PER THOUSAND
- GENERICS/GPC/PRIVATE LABEL - \$2.75  
PER THOUSAND
- ALL REMAINING BRAND STYLES WITH  
THE EXCEPTION OF BARCLAY LIGHTS  
ULTRA THINS (WHERE AVAILABLE) -  
\$2.00 PER THOUSAND

THE LIST PRICE OF BARCLAY LIGHTS ULTRA THINS,  
WHICH IS BEING INTRODUCED IN LIMITED MARKET  
AREAS, WILL NOT BE INCREASED AT THIS TIME AND  
REMAINS UNCHANGED.

ALL ORDERS RECEIVED AFTER THE CLOSE OF BUSI-  
NESS TODAY (INCLUDING STANDING AND FUTURE-

DATED ORDERS FOR SHIPMENT ON TUESDAY, DECEMBER 8, 1987) WILL BE INVOICED AT THE NEW PRICE.

FOR ALL OF OUR CIGARETTE BRANDS, WITH THE EXCEPTION OF OUR GENERIC/GPC/PRIVATE LABEL CIGARETTES AND BARCLAY LIGHTS ULTRA THINS, YOU MAY PURCHASE UP TO A MAXIMUM OF THE FOLLOWING PERCENTAGES OF EACH STYLE BY WEEK AND RECEIVE A CREDIT MEMO FOR THE DIFFERENCE BETWEEN THE OLD AND NEW PRICE (LESS NORMAL DISCOUNTS):

1. ORDERS RECEIVED AFTER THE CLOSE OF BUSINESS FRIDAY, DECEMBER 4, 1987, FOR SHIPMENT BETWEEN TUESDAY, DECEMBER 8, AND FRIDAY, DECEMBER 11, 1987:

250%

THE ABOVE ORDERS MUST BE RECEIVED IN OUR ORDER

Received Dec 09 1987

---

MAILGRAM SERVICE CENTER  
MIDDLETOWN, VA, 22645  
08PM

Western Union  
Mailgram (SEAL)

1-239212U342025 12/08/87 ICS WAI6614 RLAC  
00586 MLTN VA 12/08/87 JN83277

J. R. DAVIS  
LIGGETT & MYERS TOBACCO CO.,  
300 NORTH DUKE ST  
DURHAM, N. C. 27702

DECEMBER 8, 1987

TO OUR VALUED CUSTOMERS:

BRANDED CIGARETTES

EFFECTIVE WITH SHIPMENTS MADE DECEMBER 10, 1987 AND THEREAFTER, THE LIST PRICE OF ALL OUR BRANDED CIGARETTES WITH THE EXCEPTION OF L&M 30'S ARE INCREASED TWO DOLLARS (\$2.00) PER THOUSAND. BRANDS PREVIOUSLY BILLED AT \$37.15 PER THOUSAND WILL BE BILLED AT \$39.15 PER THOUSAND AND BRANDS PREVIOUSLY BILLED AT \$38.65 PER THOUSAND WILL BE BILLED AT \$40.65 PER THOUSAND. L&M 30'S IN TEST AREA ARE INCREASED ONE DOLLAR SIXTY CENTS (\$1.60) PER THOUSAND.

ALL ORDERS OF BRANDED CIGARETTES INCLUDING L&M 30'S IN TEST AREA RECEIVED IN OUR DURHAM, NORTH CAROLINA OFFICE AT 8:00 A.M. EASTERN STANDARD TIME ON DECEMBER 9, 1987, AND THEREAFTER, AS WELL AS STANDING ORDERS AND ORDERS FOR FUTURE SHIPMENT, WILL BE BILLED AT THE NEW PRICE.

WE WILL ACCEPT AND INVOICE THREE (3) SPECIAL ORDERS FOR BRANDED CIGARETTES INCLUDING L&M 30'S IN THE TEST AREA AT THE OLD PRICE.

THE FIRST ORDER COVERING 150% OF A NORMAL WEEK'S AVERAGE PURCHASES, BY BRAND STYLE MUST BE RECEIVED AT OUR DURHAM, NORTH CAROLINA OFFICE, NO LATER THAN 11:00 A.M., EASTERN STANDARD TIME, THURSDAY, DECEMBER 17, 1987, AND BE FOR SHIPMENT DURING THE PERIOD DECEMBER 14, 1987 THROUGH DECEMBER 18, 1987.

THE SECOND ORDER COVERING 200% OF A NORMAL WEEK'S AVERAGE PURCHASES, BY BRAND STYLE, MUST BE RECEIVED AT OUR DURHAM, NORTH CAROLINA OFFICE, NO LATER THAN 11:00 A.M., EASTERN STANDARD TIME, WEDNESDAY, DECEMBER 23, 1987 AND MUST BE FOR SHIPMENT DURING THE PERIOD DECEMBER 21, 1987 THROUGH DECEMBER 24, 1987.

Received Dec 09 1987.

---

SAMI/Burke

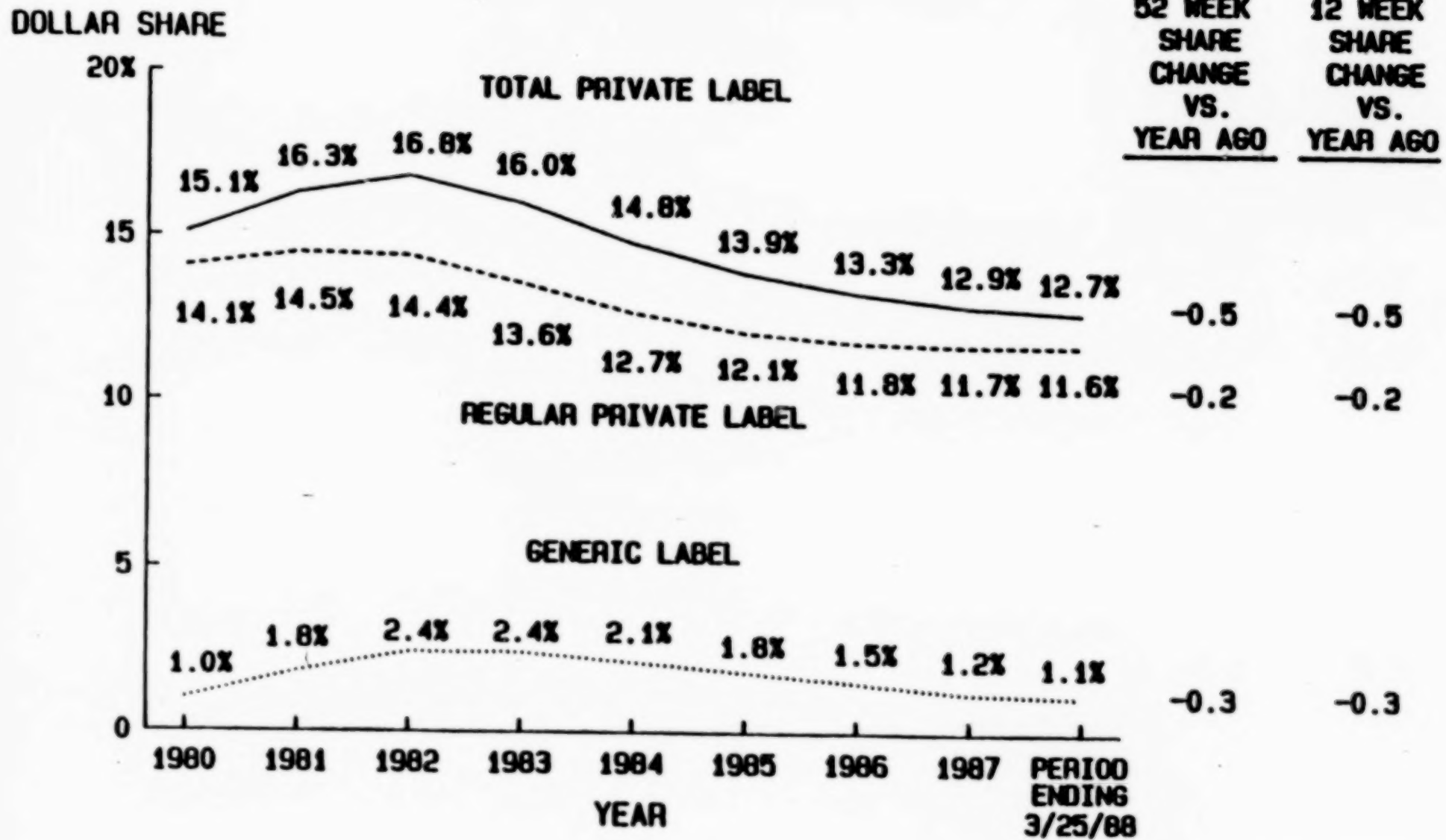
Private Label &amp; Generic Analysis

\* \* \*

## MARKETING IN THE 80'S

### PRIVATE LABEL & GENERIC DOLLAR SHARES

### ALL DEPARTMENTS COMBINED



SAMI/BURKE

BROWN WILLIAMSON  
TOBACCO CO  
BOX 35090 SALES COMM (09)  
LOUISVILLE KY 40232

Western Union  
Mailgram

1-155629U168008 06/16/88 ICS AT21762 RLAC  
01417 MLTN VA 06/16/88 JN37174

DEAR CUSTOMER:

EFFECTIVE AT THE CLOSE OF BUSINESS TODAY, JUNE 16, 1988, THE LIST PRICES OF OUR CIGARETTE BRANDS ARE INCREASED AS FOLLOWS:

- FALCON LIGHTS, RICHLAND 20'S (WHERE AVAILABLE), AND VICEROY GENERICS (WHERE AVAILABLE) - \$2.50 PER THOUSAND
- RICHLAND 25'S - \$1.60 PER THOUSAND
- GENERICS/GPC/PRIVATE LABEL - \$2.75 PER THOUSAND
- ALL REMAINING BRAND STYLES - \$2.00 PER THOUSAND.

ALL ORDERS RECEIVED AFTER THE CLOSE OF BUSINESS TODAY (INCLUDING STANDING AND FUTURE-DATED ORDERS FOR SHIPMENT ON MONDAY, JUNE 20, 1988) WILL BE INVOICED AT THE NEW PRICE.

FOR ALL OUR CIGARETTE BRANDS WITH THE EXCEPTION OF GPC CIGARETTES, YOU MAY PURCHASE UP TO A MAXIMUM OF 175% OF YOUR AVERAGE WEEKLY PURCHASES DURING EACH OF THE FOLLOWING TIME PERIODS AND RECEIVE A CREDIT MEMO FOR THE DIFFERENCE BETWEEN THE OLD AND NEW PRICE (LESS NORMAL DISCOUNTS). WE

WILL INCLUDE IN THE CREDIT MEMO ALL REASONABLE PURCHASES OF GPC CIGARETTES DURING THESE TWO TIME PERIODS.

- SHIPMENTS BETWEEN MONDAY, JUNE 20, AND FRIDAY, JUNE 24, 1988.

THESE ORDERS MUST BE RECEIVED IN OUR ORDER DEPARTMENT BY 12:00 NOON (YOUR TIME) THURSDAY, JUNE 23, 1988.

---

LIGGETT & MYERS  
TOBACCO CO.  
300 N DUKE ST  
DURHAM NC 27702 17PM

Western Union  
Mailgram

1-219113U169025 06/17/88 ICS WA16614 RLAC  
00630 MLTN VA 06/17/88 JN37549

J. R. DAVIS  
LIGGETT & MYERS TOBACCO CO.,  
300 NORTH DUKE ST  
DURHAM, N. C. 27702

TO OUR VALUED CUSTOMERS JUNE 17, 1988

EFFECTIVE JUNE 17, 1988 AND THEREAFTER, THE LIST PRICE OF ALL OUR BRANDED CIGARETTES WITH EXCEPTION OF L&M 30'S WILL BE INCREASED TWO DOLLARS (\$2.00) PER THOUSAND CIGARETTES. BRANDS PREVIOUSLY BILLED AT \$39.15 PER THOUSAND WILL BE BILLED AT \$41.15 PER THOUSAND AND BRANDS PREVIOUSLY BILLED AT \$40.65 PER THOUSAND WILL BE BILLED AT \$42.65 PER THOUSAND, SUBJECT TO OUR REGULAR CREDIT TERMS. L&M 30'S IN THE TEST AREA WILL BE INCREASED ONE DOLLAR THIRTY THREE CENTS (\$1.33) PER THOUSAND.

IN ADDITION, EFFECTIVE JUNE 17, 1988 AND THEREAFTER, THE LIST PRICE OF ALL GENERIC AND PRIVATE LABEL CIGARETTES MANUFACTURED BY LIGGETT & MYERS TOBACCO COMPANY WILL BE INCREASED TWO DOLLARS SEVENTY FIVE CENTS (\$2.75) PER THOUSAND CIGARETTES, SUBJECT TO OUR REGULAR CREDIT TERMS FOR THESE TYPES OF CIGARETTES.

WE WILL ACCEPT ORDERS FOR BRANDED AND  
GENERIC AND PRIVATE LABEL PRODUCTS RECEIVED  
IN OUR DURHAM, NORTH CAROLINA OFFICE  
THROUGH JUNE 24, 1988 FOR IMMEDIATE SHIPMENT  
AT THE OLD PRICE.

WE THANK YOU FOR YOUR CONTINUED COOPERA-  
TION IN THE MARKETING OF OUR PRODUCTS.

LIGGETT & MYERS TOBACCO COMPANY  
DURHAM, NORTH CAROLINA 27702

23:26 EST

MGMCOMP

Received Jun 20 1988  
Sales Dept.

---

DURHAM SUN - JULY 28, 1988

**1st L&M stockholder session brief; firm said stronger**

S JUL 20 '80

By LAURA WOODY

Sun staff writer

Liggett & Myers Tobacco Co's historic First Annual  
Stockholders Meeting was over just 10 minutes after it  
began.

Fewer than 30 people attended the first stockholder  
meeting since the 110-year-old corporation made a public  
offering of 4 million shares of common stock in October.

Most who came were L&M employees and not all  
were stockholders.

Absent from the meeting was Bennett S. LeBow, a  
New York Investor and Liggett owner since October 1986.  
He is the majority stockholder with 83 percent of the  
company's stock.

Liggett President K.v.R. Dey Jr. told those on hand  
that despite industry setbacks, the Durham based tobacco  
company has strengthened its financial position by pay-  
ing off debts.

"We remain optimistic about our future, but we are  
cognizant of the difficult issues that are affecting Liggett  
and the industry," Dey said.

"Reduced annual consumption, product liability liti-  
gation. Increased taxation and governmental restrictions  
increasing social pressures and competitive pressures  
place us in a tough business environment."

Dey said "niche marketing" will continue to be the focus of the Company and that two new products are doing well.

Eve Ultra Lights 120s are being sold to retailers and soon will be on the market, Dey said. The product is an extension of Eve Lights 120s in the full-priced cigarette category.

He said the new product is an example of the marketing directed at specific consumer groups Liggett is pursuing.

"We're the smallest of six cigarette companies and we're after those niches," Dey said, "Eve is a slim cigarette with a floral pattern that has traditionally appealed to females and the ultra light will appeal to different smokers.

"We are also encouraged with the performance of Omni 30s, a value-added product now on the market in Japan and we expect to capitalize on future international opportunities."

He said it may be a year or two before income from the Japan ventures begins in earnest.

"We expect our sales in Japan to account for 10 percent of our sales over time," Dey said.

The inexpensive, generic cigarettes once popular with smokers are fading out of favor, but Dey said he is optimistic that growth in the mid-priced branded cigarettes will continue an upswing.

Liggett had success in the early 1980s by being the first cigarette company to enter the generic market. Dey,

however, said the generics' market share is steadily declining now, as smokers choose the "price-value category of cigarettes such as Doral and Cambridge.

"With generics we entered a niche no one else knew was there and we encountered considerable competition," Dey said, "Now our business across the board is better than it's ever been."

With its recently acquired \$30 million line of credit, Liggett is considering diversifying from the tobacco business by entering another business, such as candy, to complement its cigarette line.

Although L&M had signed a "letter of intent" to purchase a candy company last September, Dey said, it withdrew in the final week.

"It didn't fit some of our particulars and we decided to continue looking around," he said.

For the fiscal year ended March 31, net sales were \$(Ill.) million and net income was \$(Ill.) million, or \$1(Ill.) a share.

During the first quarter this year, net sales were \$122.3 million, down from \$142.3 million for the same period a year ago. Net earnings were \$(Ill.) million, or 22 cents a share, compared with a net income of \$94 million or 47 cents a share, last year.

Liggett Group also declared quarterly cash dividend of 1 cents a share, payable on Aug. 27 to stockholders of record on Aug. 8.

Liggett reduced its debt to \$103 million with proceeds from the sale of stock and cash from operations. Dey said \$34.8 million in long term debt remains.

The initial price of Liggett stock was \$12 a share and is now hovering at \$8 a share.

All five items that were voted on, including five directors, were approved, with all stockholders voting by mail.

Those named directors for the next year are Dey; LeBow; and William Wehael, chairman of the board and an officer and director of various companies controlled by LeBow; Clarence W. [Illegible] and Gene D. Hoffman.

The company yesterday announced it will discontinue quarterly "inventory loading" incentive program that encourages retailers to buy large amounts of cigarettes early in the quarter.

The large blocks of purchase were causing irregular sales [Illegible].

---

[Handwritten Notes]

1-5-88

Gregory F. Theriault

ID 35484

Waterville, ME

Code 01D07D

Rec 1/4/89

Christopher Whal [Illegible]

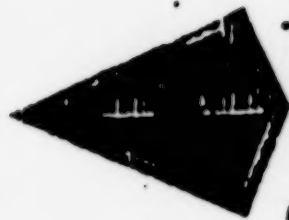
Madison, ME

David Christopher

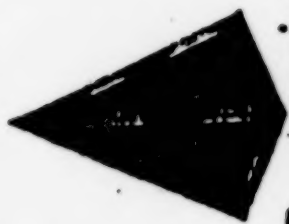
6:45 AM



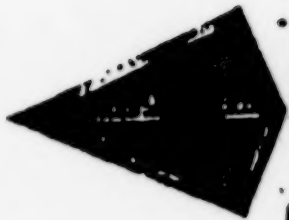
# Pyramid



Pyramid  
Ultra Lights



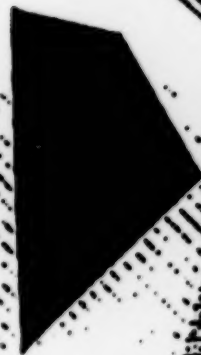
Pyramid  
Lights



Pyramid

Pyramid  
Lights  
Filter Kings

Filter 100's



Pyramid

[Handwritten Notes]

Gregory F. Theriault  
 ID 35484  
 Waterville, ME  
 CODE 01D07D

Rec 1/4/89  
 Christopher S. Wh[Illegible]  
 Madison, ME  
 David Christopher  
 6:45 AM

December 12, 1988

To: Region Managers  
 Regional Account Managers  
 District Managers  
 National Account Managers

From: Ennis Laws

Subject: Pyramid - New Product Introduction

If the price spread between generics and full-priced cigarettes narrows, smokers are switching to branded generics which are priced competitively with generics and also heavily couponed. Net/net branded generics as opposed to generics now represent the lowest pricing concept in this marketplace; and, as a result, smokers are migrating toward the branded generic concepts. Pyramid offers brand name assurance of quality as well as the *lowest price* in the market and future price and excise tax increases will only magnify its appeal.

*Pyramid, brand name quality with a new low price.*

Since the communication of the price points spread is critical, this brand should be targeted to high volume accounts where you can gain retailer support - i.e.,

- Price Clubs
- State line outlets
- Indian stores
- Large independents
- Chains (that cooperate)

You should develop a plan *market area by market area* to take full advantage of this program where it makes good business sense.

Introductory Deal \$12.00 off invoice per 12M case. A copy of the trade announcement and product specifications is attached for your use. Shipping is planned for December 15 from Durham.

Distribution Allowance of \$.08 per carton will apply to all product purchased. Payment of this allowance will also be deducted off invoice.

Order Procedure will be the same as we used for Savvy and Chesterfield Filter. Initially you should anticipate a two (2) week lead time on all orders. The Liggett representative should phone these orders directly to the Order Department. If you have a warehouse that must have back-up inventory to support a direct customer's purchases, please coordinate with Mr. Leroy Duke in the Order Department. We will start in January to build inventory in all warehouse locations to support turnover orders.

\* \* \*

[Handwritten Notes]

Gregory F. Theriault  
ID 35484  
Waterville, ME  
Code 01D07D

Rec 1/4/89

David Christopher  
Christopher Wh[Illegible]  
6:45 AM

#### STATUS OF OUR COMPANY

- BRANDED FULL PRICE CIGARETTES ARE LIFE BLOOD
- NEW BRANDS ARE RIFLE-SHOT MARKETING
- \$3.50 OFF BRANDS OFFER OPPORTUNITY
- GENERIC BRANDS ARE PROFITABLE
  - DEFENSIVE MODE
  - NO EQUITY OR OWNERSHIP
- PRIVATE LABEL BRANDS
  - NO OWNERSHIP OR EQUITY
  - BRAND OWNER CONFUSION

\* \* \*

[Handwritten Notes]

Rec 1/4/89  
 Christopher Wh[Illegible]  
 Madison, ME  
 David Christopher  
 6:45 AM

Gregory F. Theriault  
 ID 35484  
 Waterville, ME  
 Code 01D07D

NEW PRICES

	<u>KING</u>	<u>100MM</u>	<u>AVG.</u>	<u>FROM BRANDED</u>
BRANDED	\$8.73	\$9.03	\$8.88	- 0 -
\$3.50 OFF (LIST)	\$8.23	\$8.53	\$8.38	-\$ .50
DORAL/ CAMBRIDGE	\$6.35	\$6.60	\$6.475	-\$2.405
L&M GENERIC/ UPSCALE	\$6.25	\$6.50	\$6.375	-\$2.505
\$3.50 OFF (LESS COUPON)	\$4.73	\$5.03	\$4.88	-\$4.00
PYRAMID	\$3.85	\$4.10	\$3.975	-\$4.905
PRIVATE LABEL CONTRACT*	\$3.72	\$3.97	\$3.845	-\$5.035

\*CONTRACT PRICE MAY NOT BE INVOICE PRICE  
 BECAUSE CAN BE RAISED BY TRADEMARK OWNER.

Industry Update

THE MAXWELL CONSUMER REPORT

1988 YEAR END SALES ESTIMATES  
 FOR THE CIGARETTE INDUSTRY

JOHN C. MAXWELL, JR.  
 (804) 782-3630

JANUARY 27, 1989  
 WFS-2436

\* \* \*

## RJR NABISCO, INC.

## 1988 YEAR-END BRAND SALES AND MARKET SHARES

	Sales (M. Units)			Market Shares (%)				
	1987	1988	Change	1988	1987	1986	1985	1984
<b>WINSTON</b>								
Soft Pack 85s (16)	26.48	24.79	(6.4)	4.4	4.6	4.8	5.0	5.3
Hard Pack 85s (17)	2.72	2.69	(1.1)	0.5	0.5	0.5	0.5	0.4
100s (18)	9.51	8.89	(6.5)	1.6	1.7	1.7	1.9	1.9
Lights 85s (11)	11.00	11.26	(3.7)	2.0	2.0	2.0	2.0	2.1
Lights 100s (11)	7.87	7.44	(5.5)	1.3	1.4	1.4	1.4	1.5
Lights 85 Box (11)	1.17	1.02	(12.8)	0.2	0.2	0.1	-	-
Lights 100s Box (10)	0.58	0.52	-	0.1	0.1	0.1	-	-
Ultra 85s (5)	1.22	1.32	8.2	0.2	0.2	0.2	0.2	0.2
Ultra 100s (5)	2.04	2.08	2.0	0.4	0.4	0.4	0.3	0.3
Total	63.28	60.01	(5.2)	10.7	11.1	11.2	11.3	11.7
<b>SALEM</b>								
85s (17)	10.53	9.41	(10.8)	1.7	1.8	1.9	2.1	2.2
100s (17)	6.90	6.30	(8.7)	1.1	1.2	1.3	1.3	1.4
Lights (10)	10.86	9.83	(11.3)	1.7	1.9	1.9	1.9	1.9
Long Lights (10)	8.34	7.49	(10.2)	1.4	1.5	1.6	1.6	1.6
Lights 100s Box (12)	0.83	0.69	-	0.1	0.1	-	-	-
Ultra Lights 85s (5)	1.43	1.67	16.8	0.3	0.3	0.2	0.2	0.2
Ultra Lights 100s (5)	2.63	2.79	6.1	0.5	0.5	0.4	0.4	0.4
Slim Lights 100s (8)	2.28	2.55	11.8	0.5	0.4	0.4	0.4	0.4
Total	43.80	40.53	(7.5)	7.3	7.7	7.8	7.9	8.1
<b>DORAL</b>								
85s Filter (12)	3.27	3.08	(5.8)	0.6	0.6	0.6	0.6	0.7
Menthol Filter (12)	1.73	1.68	(2.9)	0.3	0.3	0.3	0.5	0.5
100s Filter (12)	4.77	4.58	(4.0)	0.8	0.8	0.8	0.2	0.2
100s Menthol Filter (12)	2.96	3.06	3.4	0.6	0.5	0.4	0.1	0.1
Full Flavor 85s (17)	1.33	1.74	30.8	0.3	0.2	-	-	-
Full Flavor 100s (14)	1.74	2.47	40.3	0.4	0.3	-	-	-
Ultra Lts. Filter 100s (7)	1.40	2.09	48.3	0.4	0.3	-	-	-
Total	17.22	18.70	8.6	3.4	3.0	2.1	1.4	1.5
<b>VANTAGE</b>								
85s (11)	7.40	6.58	(10.9)	1.2	1.3	1.4	1.5	1.6

Menthol (10)	1.23	1.11	(9.8)	0.2	0.2	0.7	0.3	0.3
100s (9)	3.87	3.60	(9.6)	0.6	0.7	0.2	0.7	0.6
Menthol 100s (9)	0.36	0.35	-	-	-	0.1	0.1	0.1
Ultra Lights 85s (5)	2.15	2.20	2.2	0.4	0.4	0.3	0.3	0.3
Ultra Lights 100s (5)	2.79	2.74	(1.8)	0.5	0.5	0.5	0.4	0.4
Total	<u>17.80</u>	<u>16.48</u>	(7.4)	<u>2.0</u>	<u>3.1</u>	<u>3.2</u>	<u>3.3</u>	<u>3.5</u>
<b>CAMEL</b>								
Filter Soft Pack (16)	6.01	6.14	2.2	1.1	1.0	1.1	1.1	1.1
Filter Hard Pack (17)	0.06	1.33	-	0.2	0.2	0.2	0.1	0.1
Filter 100s (18)	0.40	0.38	-	0.1	0.1	-	-	-
Lights Hard Pack 80s (10)	0.83	1.11	-	0.2	0.2	0.2	0.2	0.1
Lights 85s (9)	6.28	5.46	3.4	1.0	0.0	0.8	0.9	1.0
Lights 100s (12)	1.75	1.70	(2.9)	0.3	0.3	0.3	0.3	0.3
Total	<u>16.23</u>	<u>16.12</u>	[III.]	<u>2.9</u>	<u>2.7</u>	<u>2.6</u>	<u>2.6</u>	<u>2.6</u>
<b>BARCLAY</b>								
85s (1)	1.02	0.91	-	0.2	0.2	0.2	0.3	0.3
100s (3)	0.76	0.64	-	0.1	0.1	0.2	0.2	0.2
Box (1)	.32	0.28	-	-	0.1	0.1	0.1	0.1
Menthol 85s (1)	0.02	-	-	-	-	-	-	0.1
Menthol 100s (3)	0.02	-	-	-	-	-	-	-
Total	<u>2.14</u>	<u>1.83</u>	(14.4)	<u>0.3</u>	<u>0.4</u>	<u>0.5</u>	<u>0.6</u>	<u>0.7</u>
<b>RICHLAND 25's</b>								
85s (17)	0.87	0.43	-	0.1	0.1	0.2	0.2	-
100s (17)	0.88	0.52	-	0.1	0.1	0.1	-	-
Menthol 85s (18)	0.57	0.28	-	0.1	0.1	0.1	0.1	-
Lights 85s (10)	0.39	0.14	-	-	0.1	0.1	0.1	-
Lights 100s (12)	0.55	0.24	-	-	0.1	0.1	-	-
Total	<u>3.26</u>	<u>1.61</u>	[III.]	<u>0.3</u>	<u>0.5</u>	<u>0.6</u>	<u>0.4</u>	<u>-</u>
<b>ALL OTHERS***-</b>								
TOTAL FILTER	62.05	60.55	(2.4)	10.8	10.9	11.5	11.7	11.2
Raleigh (King)** (25)	0.37	0.30	-	0.1	0.1	0.1	0.1	0.1
Kool (Regular) (20)	0.29	0.24	-	-	-	0.1	0.1	-
TOTAL DOMESTIC	62.71	61.09	(2.6)	10.9	11.0	11.7	11.9	11.3
Filter % of B&W Total	98.9%	99.1%		99.1%	96.9%	96.9%	98.8%	96.6%

\*Includes Felcon Lights.

\*\*couponed cigarettes

\*\*\*Includes several full service and economy segment test products.

\* \* \*

## LIGGETT GROUP INC.

## 1988 YEAR-END BRAND SALES AND MARKET SHARES

	Sales (M. Units)			Market Shares (%)					
	1987	1988	Change	1988	1987	1986	1985	1984	
<b>GENERICs</b>									
85s	3.80	2.55	(32.9)	0.5	0.7	0.9	1.2	1.5	
100s	4.46	3.13	(29.8)	0.5	0.8	1.1	1.4	1.6	
Menthol 85s	1.03	0.66	-	0.1	0.2	0.3	0.4	0.4	
Menthol 100s	1.40	0.94	-	0.2	0.2	0.3	0.4	0.5	
Total	<u>10.69</u>	<u>7.28</u>	(31.9)	1.3	<u>1.9</u>	<u>2.6</u>	<u>3.4</u>	<u>4.0</u>	
<b>CLASS A</b>									
Class A	1.93	1.71	(11.4)	0.3	0.3	-	-	-	
Class A Deluxe	0.10	0.15	-	-	-	-	-	-	
Total	<u>2.03</u>	<u>1.86</u>	(8.4)	0.3	<u>0.3</u>	<u>-</u>	<u>-</u>	<u>-</u>	
<b>EVE</b>									
Slim Lights (13)	0.14	0.10	-	-	-	0.1	-	0.1	
Menthol 100s (13)	0.08	0.06	-	-	-	-	-	-	
120s (12)	1.14	1.08	[III.]	0.2	0.2	0.2	0.2	0.2	
Menthol 120s (13)	0.74	0.71	-	0.2	0.2	0.1	0.1	0.1	
Total	<u>2.10</u>	<u>1.95</u>	(7.1)	<u>0.4</u>	<u>0.4</u>	<u>0.4</u>	<u>0.3</u>	<u>0.4</u>	
<b>L&amp;M</b>									
85s Soft Pack (13)	1.66	1.31	(21.1)	0.2	0.3	0.3	0.4	0.4	
85s Hard Pack (14)	0.03	0.02	-	-	-	-	-	-	
100s (14)	0.47	0.36	-	0.1	0.1	0.1	0.1	0.1	
Lights (8)	0.11	0.08	-	-	-	-	-	-	
Total	<u>2.27</u>	<u>1.77</u>	(22.0)	<u>0.3</u>	<u>0.4</u>	<u>0.4</u>	<u>0.5</u>	<u>0.5</u>	

LARK									
85s (14)	0.30	0.24	-	-	0.1	-	0.1	0.1	
100s (15)	0.15	0.12	-	-	-	-	-	-	
Lights 85s (13)	0.50	0.39	-	0.1	0.1	0.1	0.1	0.1	
Lights 100s (14)	0.37	0.29	-	0.1	0.1	0.1	0.1	0.1	
Total	<u>1.32</u>	<u>1.04</u>	(21.2)	<u>0.2</u>	<u>0.3</u>	<u>0.2</u>	<u>0.3</u>	<u>0.3</u>	
ALL OTHERS**	0.07	0.37	-	0.1	-	-	0.1	-	
TOTAL FILTER	18.48	14.27	(22.8)	2.6	3.3	3.6	4.6	5.2	
CHESTERFIELD									
King* (25)	1.55	1.21	(21.9)	0.2	0.3	0.3	0.3	0.4	
Regular* (20)	0.25	0.18	-	-	-	-	0.1	0.1	
TOTAL DOMESTIC	20.28	15.06	(22.8)	2.8	3.6	3.9	5.0	5.7	
Filter % of Lig. Total	91.1%	91.1%		91.1%	91.1%	91.*%	92.5%	92.7%	
*Couponed Cigarettes									
**Include new products									

[illegible]

Total Consumption	[III.]	668.12	(2.1)
Total Production	[III.]	660.00	(4.7)
Change in Inventory	[III.]	(8.12)	-

Source: [Illegible]

Figures in parentheses in the brand name [Illegible]

[\*=Illegible]

[Handwritten Note]  
[May 1989]

*U.S. Distribution Journal*  
Vol. 216, No. 5

---

## UPFRONT

### Pyramid program eyed

*Liggett maintains price point still key*

NASHVILLE, TN: Liggett & Myers Tobacco Co. is developing a trade program for its ultra low priced Pyramid cigarettes, but one that will not sacrifice Pyramid's retail price point, a Liggett executive said.

"We're evaluating a Pyramid program." Liggett President K.v.R. Dey told *U.S. Distribution Journal* at the recent National Association of Tobacco Distributors convention "We're addressing the position of the wholesaler. We don't want to loose the interest of wholesalers."

Liggett introduced the stylishly-packaged Pyramid Lights, which was designed to retail for between 60 cents and 80 cents - last December. To keep the price low, Liggett's strategy was to eschew national advertising and trade promotion.

Yet, while trade margins on Pyramid are similar to many full-price national brands, Dey confirmed many wholesalers have been reluctant to carry the brand.

Wholesalers maintain Pyramid in effect "competes" with Liggett black-and-white Quality Seal generics, for which they are eligible for rebates and other PMs.

Pyramid has gained distribution through membership clubs, mass merchandisers, and other direct discounters, Dey said. To appeal to a broad segment of smokers, the rollout included five styles Light Kings, Light 100s, Menthol 100s, Ultra-Light 100s and Non-Filter Kings.

"We know there is a place for Pyramid, in that it has been accepted by the consumer," Dey maintained, "but the key to its [long-term viability] is maintaining the [price] differential at retail."

Dey said it's too early to quantitatively evaluate Pyramid's level of acceptance, though the company is gathering data on who is buying the brand.

Liggett expects some sales of Pyramid to come at the expense of the black-and-white generics, a category the company pioneered in 1981 and whose market share has been declining dramatically in recent years.

"The black-and-white category across all consumer goods has diminished greatly. Cigarettes are the last to survive to any significant degree," Dey said. The demise of generic cigarettes can be traced to the success of price-value brands.

Dey said nine cigarette pricing levels exist, closing the gap between what was traditionally considered full-price and price-value brands. Pyramid was designed to create a district price level.

"We're the niche player in the cigarette industry," Dey said, "We can't get into a battle of marketing incentives."

[Extraneous Material Deleted in Printing]

---

[In evidence 7/12/89]

Annual Market Share (in percentages) of all  
Generic Cigarettes in the United States  
Cigarette Market (1980-1988)

<u>Date</u>	<u>Share of Market(%)</u>
1980	0
1981	0.4
1982	0.9
1983	2.9
1984	4.4
1985	4.7
1986	4.5
1987	4.1
1988	3.3

(Source: Plaintiff's Trial Exhibits 3648, 3649, 3651, 3659, 3672, 3655, 3656, 3658)

---

[In Evidence 7/12/89]

## Liggett &amp; Myers Generic Cigarettes (King Size)

## List Price Differential Between Branded Cigarettes and Generic Cigarettes\*

	1980		1981		1982		1983				1984	
	May	Nov.	April	Sept.	Feb.	Aug. Sept.	Oct.	Nov.	Jan.	June	Dec.	Mar.
Branded (\$/M)	17.65	18.50	19.35	20.20	21.20	22.70	24.70	26.20	26.90	28.40	29.15	29.15
Generics (\$/M)	12.45	13.30	13.30	13.65	14.50	15.25	15.25	17.25	17.25	17.25	17.25	18.75
Savings (\$/M)	5.20	5.20	6.05	6.56	6.70	7.45	9.45	8.95	9.65	11.15	11.90	10.40
Savings (%)	29.46%	28.11%	31.26%	32.43%	31.60%	32.81%	38.26%	34.16%	35.87%	39.26%	40.82%	35.68%
			<u>1985</u>		<u>1986</u>		<u>1987</u>		<u>1988</u>		<u>1989</u>	
	June	Dec.	June	Dec.	June	Dec.	June	Dec.	June	Dec.	June	
Branded (\$/M)	30.15	31.15	32.15	33.15	34.40	35.65	37.15	39.15	41.15	43.65	46.15	
Generics (\$/M)	18.75	18.75	19.75	19.75	21.00	22.25	23.50	26.00	28.75	31.25	33.75	
Savings (\$/M)	11.40	12.40	12.40	13.40	13.40	13.40	13.65	13.15	12.40	12.40	12.40	
Savings (%)	37.81%	39.80%	38.57%	40.42%	38.95%	37.50%	36.74%	33.50%	30.13%	28.40%	26.87%	

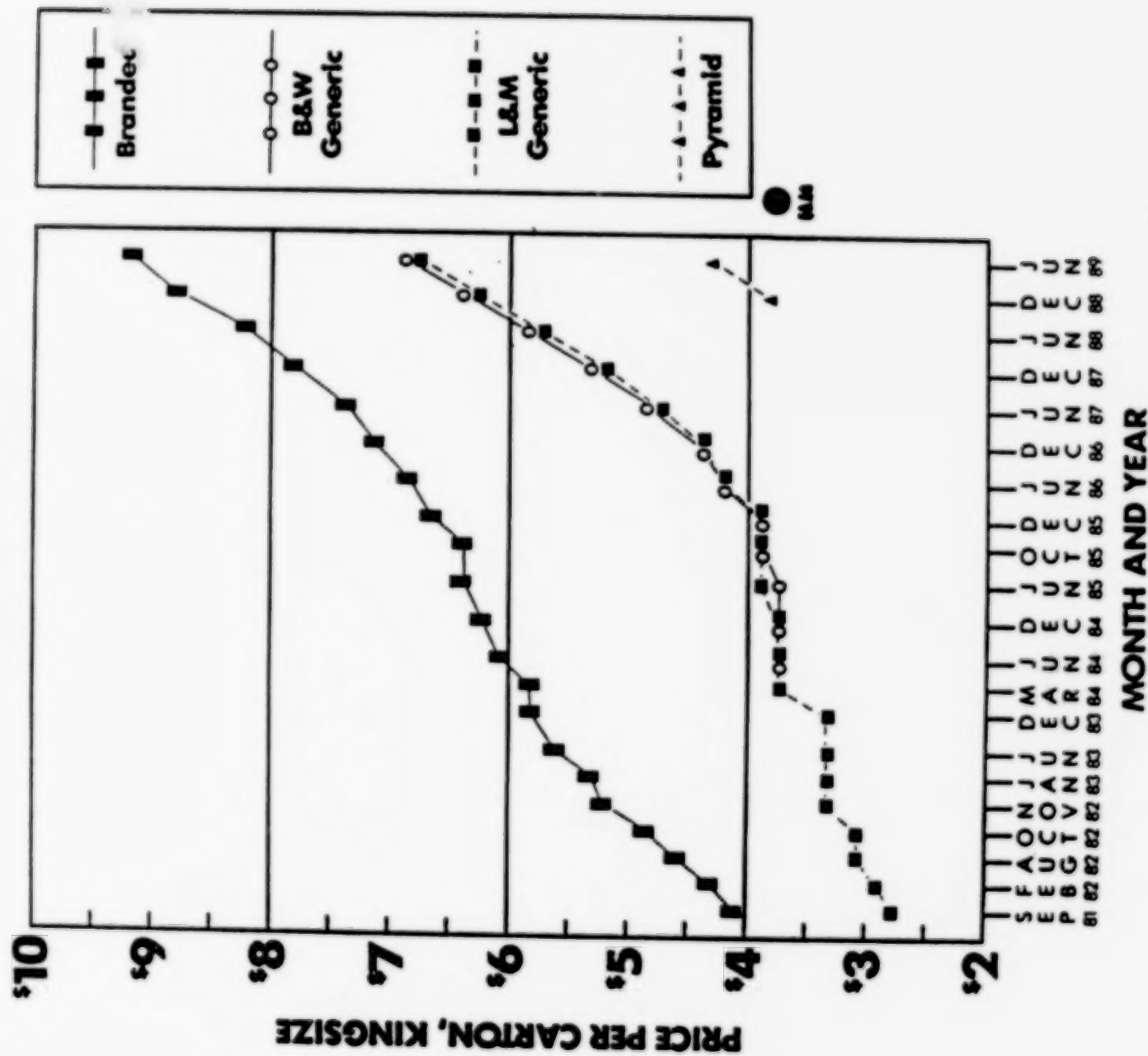
(Source: Plaintiff's Trial Exhibits 7000, 3655, 3656, 3657, 3684, 2066, 2094, 4413, 1998, 2069, 2092 and 4414)

---

\* The list price noted for Liggett & Myers' generic cigarettes apply to Liggett & Myers' generic cigarettes other than for private label chains.

---

# LIST PRICE FOR CIGARETTES, Branded & Generic, 1981-1989



[In Evidence 8/9/89]

**SUMMARY OF DOCUMENTS SHOWING LIGGETT & MYERS' REBATE PROGRAMS FOR ITS FRANCHISEES AND B&W'S REBATE PROGRAMS AS ANNOUNCED TO SALES PERSONNEL JUNE 4-JULY 20, 1984<sup>1</sup>**

(B&W/s program was effective with first shipment of generics on or about July 17, 1984.

Liggett's program was effective August 1, 1984)

Cases Per Quarter	B&W June 4	L&M June 11 <sup>2</sup>	B&W June 21	L&M June 22 <sup>2</sup>	B&W June 29	L&M July 6	B&W July 10	L&M July 13	B&W July 17	L&M July 20
0-99	0¢	0¢	20¢	20¢	30¢	30¢	55¢	45¢	60¢	50¢
100-199	10¢	5¢	30¢	25¢	40¢	35¢	55¢	45¢	60¢	50¢
200-499	15¢	5¢	35¢	25¢	45¢	35¢	55¢	45¢	60¢	50¢
500-999	20¢	10¢	40¢	33¢	50¢	43¢	60¢	53¢	65¢	58¢
1000-1499	25¢	15¢	45¢	38¢	55¢	48¢	65¢	58¢	70¢	63¢
1500-7999	30¢	20¢	50¢	43¢	60¢	53¢	70¢	63¢	75¢	68¢
8000+	30¢	20¢	50¢	43¢	60¢	53¢	75¢	68¢	80¢	73¢
Source (Plaintiff Trial Exhibits	16	4111 3286	4079	3310	4081	3375 3376	437	4082	33 3341 3475 4369	4112 3354

<sup>1</sup> Some time after B&W entered, Liggett & Myers included its franchise incentive payments as part of its total rebate program and, therefore, it is included on this summary starting June 22.

<sup>2</sup> Liggett's program mentioned a possible incremental program whereby a customer could earn 5 cents per carton if it exceeded its base level. This program was never implemented and was superceded by Liggett's July 6 program. The figures under this column, therefore, do not include the 5¢ incremental payment which is impossible to value and which would not have applied to Liggett's existing volume.

[In Evidence 8/9/89]

**SUMMARY OF DOCUMENTS SHOWING LIGGETT & MYERS' REBATE PROGRAMS FOR BROKER CUSTOMERS AND B&W'S REBATE PROGRAMS AS ANNOUNCED TO SALES PERSONNEL JUNE 4-JULY 20, 1984**

(B&W's program was effective with first shipment of generics on or about July 17, 1984.

Liggett's program was effective August 1, 1984)

Cases Per Quarter	B&W June 4	L&M June 11 <sup>1</sup>	B&W June 21	L&M June 22 <sup>1 2</sup>	B&W June 29	L&M July 6	B&W July 10	L&M July 13	B&W July 17	L&M July 20
0-99	0¢	0¢	20¢	22.2¢	30¢	32.2¢	55¢	47.2¢	60¢	52.2¢
100-199	10¢	5¢	30¢	27.2¢	40¢	37.2¢	55¢	47.2¢	60¢	52.2¢
200-499	15¢	5¢	35¢	27.2¢	45¢	37.2¢	55¢	47.2¢	60¢	52.2¢
500-999	20¢	10¢	40¢	32.2¢	50¢	42.2¢	60¢	52.2¢	65¢	57.2¢
1000-1499	25¢	15¢	45¢	37.2¢	55¢	47.2¢	65¢	57.2¢	70¢	62.2¢
1500-7999	30¢	20¢	50¢	42.2¢	60¢	52.2¢	70¢	62.2¢	75¢	67.2¢
8000+	30¢	20¢	50¢	42.2¢	60¢	52.2¢	75¢	67.2¢	80¢	72.2¢
Source (Plaintiff Trial Exhibits	16	4111 3286	4079	3310	4081	3375 3376	437	4082	33 3341 3475 4369	4112 3354

<sup>1</sup> Liggett's program mentioned a possible incremental program whereby a customer could earn 5 cents per carton if it exceeded its base level. This program was never implemented and was superceded by Liggett's July 6 program. The figures under this column, therefore, do not include the 5¢ incremental payment which is impossible to value and which would not have applied to Liggett's existing volume.

<sup>2</sup> The rebates listed are 12.2¢ higher than Liggett's published program to include the program Liggett's brokers GPC and Federated offered to customers.

[In Evidence 8/24/89]

[Handwritten Notes]

## Generic Cigs

V & L	27.513
Sales rev. @18.72	<u>514.800</u>
Variable Margin @4.77	<u>131.175</u>
Volume Rebates @3.73	102.575
Sticker Program	<u>28.645</u>
Adjusted Margin	<.45>
Mkt. Cert.	-
Selling Field	1.000
G & A	2.000
Deprec-	5.000
C&C Mfg.	<u>13.750</u>
Capacity Income	<u>(\$21.795) + \$33.306 = \$11.511</u>

---

[In Evidence 9/27/89]

B&W Generic Cigarettes (King Size)

## List Price Differential Between Branded Cigarettes and Generic Cigarettes

	<u>1982</u>				<u>1983</u>				<u>1984</u>		<u>1985</u>		<u>1986</u>		<u>1987</u>		<u>1988</u>		<u>1989</u>
	Aug.																		
	Feb.	Sept.	Oct.	Nov.	Jan.	June	Dec.	Mar.	June	Dec.	June	Dec.	June	Dec.	June	Dec.	June	Dec.	June
Branded (\$/M)									30.15	31.15	32.15	33.15	34.40	35.65	37.15	39.15	41.15	43.65	46.15
Generics (\$/M)									18.75	18.75	18.75	19.75	21.00	22.25	23.75	26.50	29.25	31.75	34.25
Savings (\$/M)									11.40	12.40	13.40	13.40	13.40	13.40	13.40	12.65	11.90	11.90	11.90
Savings (%)									37.81%	39.80%	41.68%	40.42%	38.95%	37.59%	36.07%	32.31%	28.92%	27.26%	25.79%

(Source: Plaintiff's Trial Exhibits 7000, 3655, 3656, 3657, 3684, 2066, 2094, 4413, 1998, 2069, 2092 and 4414)

[In Evidence 10/3/89]

DEPARTMENT OF JUSTICE MERGER  
GUIDELINES CONCENTRATION  
STANDARDS

Herfindahl-Hirschman Index

Less than 1000 - Unconcentrated

1000 - 1800 - Moderately Concentrated

Greater than 1800 - Highly Concentrated

Source: U.S. Department of Justice Merger Guidelines

---

[In Evidence 10/3/89]

U.S. CIGARETTE SALES  
MARKET SHARE AND CONCENTRATION

	<u>1982</u>	
	<u>Units Sold</u>	<u>Market Share</u>
	(Billions)	(%)
R.J. Reynolds	208.79	33.4
Philip Morris	204.43	32.8
Brown & Williamson	83.18	13.3
American	55.35	8.9
Lorrillard	54.36	8.7
Liggett & Myers	17.90	2.9
Total	624.01	100.0
Four Firm Concentration	88.4	
Herfindahl-Hirschman Index	2532	

SOURCE: 1982 Maxwell Report: Revised Year-End Sale  
Estimates for the Cigarette Industry

[In Evidence 10/4/89]

CIGARETTE INDUSTRY PROFITABILITY  
CIGARETTE INDUSTRY PROFITABILITY COMPARED  
TO FOOD AND KINDRED PRODUCT  
INDUSTRY PROFITABILITY

PRE-TAX RETURN ON STOCKHOLDERS EQUITY

	<u>1979 - 1985</u>	
	<u>Food &amp; Kindred Product Industry Profitability</u>	<u>Tobacco Industry Profitability</u>
1985	21.3%	35.4%
1984	20.8%	34.1%
1983	19.8%	29.8%
1982	20.4%	30.3%
1981	22.2%	31.6%
1980	23.5%	31.5%
1979	23.3%	31.5%
1979-1985 Average	21.5%	32.2%

Return on Average Stockholders Equity

Source: United States Government, *Quarterly Financial Reports*

[In Evidence 10/5/89]

BROWN & WILLIAMSON GENERIC CIGARETTES  
EXCESS OF VARIABLE COSTS OVER NET REVENUES  
FOR THE PERIOD JULY 1984-DECEMBER 1985

18 MONTHS TOTAL: JULY 1984-DECEMBER 1985  
(000's Omitted)

Gross Paid Sales		
Including Excise Tax	\$190,602	
Less Excise Tax	<u>80,220</u>	
Net Sales		\$110,382
Less Rebates:		
Trade Rebates	37,626	
DAIP Rebates	2,161	
Interest Credit on Rebates	<u>(718)</u>	
Total: Rebates		<u>39,069</u>
NET REVENUES		\$71,313
Less Variable Costs:		
Variable Manufacturing Cost	\$ 52,071	
Leaf Lifo Expense (adjusts leaf to current cost)	(505)	
SUI Revaluation	984	
Freight, Cartage & Insurance	<u>3,535</u>	
Total: Manufacturing Cost (adjusted) and Freight		56,085

Promotional Costs	1,419	
Direct Selling Costs	850	
Displays	3,311	
Consumer Promotions	9,059	
Generic Leverage Program	<u>1,495</u>	
Total: Selling Costs		16,132
Variable Overhead		5,014
Carrying Costs		7,019
Manufacturing Variances		<u>2,024</u>
TOTAL VARIABLE COSTS		<u>86,275</u>
EXCESS OF VARIABLE COSTS OVER NET REVENUES		<u>\$14,961</u>

NOTE: Numbers may not add to totals by insignificant amounts due to rounding those numbers to thousands.

[In Evidence 10/5/89]

BROWN & WILLIAMSON GENERIC CIGARETTES  
 EXCESS OF AVERAGE VARIABLE COSTS  
 PER CARTON  
 OVER NET REVENUE PER CARTON  
 FOR THE PERIOD JULY 1984-DECEMBER 1985

18 MONTHS: JULY 1984-DECEMBER 1985  
 PER CARTON

Gross Paid Sales		
Including Excise Tax	\$3.802	
Less Excise Tax	<u>1.600</u>	
Net Sales		\$2.202
Less Rebates:		
Trade Rebates	0.750	
DAIP Rebates	0.043	
Interest Credit on		
Rebates	<u>(0.014)</u>	
Total: Rebates		<u>0.779</u>
NET REVENUES		
PER CARTON .....		\$1.422
Less Variable Costs:		
Variable Manufacturing		
Cost	\$1.039	
Leaf Lifo Expense		
(adjusts leaf to		
current cost)	(0.010)	
SUI Revaluation	0.020	
Freight, Cartage		
& Insurance	<u>0.071</u>	
Total: Manufacturing Cost		
(adjusted) and		
Freight		1.119

Promotional Costs	0.028
Direct Selling Costs	0.017
Displays	0.066
Consumer Promotions	0.181
Generic Leverage	
Program	<u>0.030</u>

Total: Selling Costs	0.322
Variable Overhead	0.100
Carrying Costs	0.140
Manufacturing Variances	<u>0.040</u>

AVERAGE VARIABLE COSTS	
PER CARTON .....	<u>1.721</u>
EXCESS OF AVERAGE VARIABLE	
COSTS PER CARTON OVER	
NET REVENUES PER CARTON	<u>\$0.298</u>

NOTE: Numbers may not add  
 to totals by insignificant  
 amounts due to rounding.

[In Evidence 10/5/89]

BROWN & WILLIAMSON GENERIC CIGARETTES  
EXCESS OF VARIABLE COSTS OVER NET REVENUES  
FOR THE PERIOD JULY 1984-DECEMBER 1985  
SUMMARY

(Rounded to Nearest Thousand)

18 MONTHS TOTAL: JULY 1984-DECEMBER 1985

Gross Paid Sales	
Including Excise Tax	\$190,602,000
Less Excise Tax	<u>80,220,000</u>
Net Sales	\$110,382,000
Less Rebates	<u>39,069,000</u>
NET REVENUES.....	\$71,313,000
Less Variable Costs:	
Manufacturing Cost	
(adjusted) and	
Freight	\$56,085,000
Selling Costs	16,132,000
Variable Overhead	5,014,000
Carrying Costs	7,019,000
Manufacturing Variances	<u>2,024,000</u>
TOTAL VARIABLE COSTS .....	<u>\$86,275,000</u>
EXCESS OF VARIABLE COSTS	
OVER NET REVENUES	<u>\$14,961,000</u>

NOTE: Numbers do not add  
to totals by insignificant  
amounts due to rounding  
those numbers to thousands.

[In Evidence 10/5/89]

BROWN & WILLIAMSON GENERIC CIGARETTES  
EXCESS OF AVERAGE VARIABLE COSTS  
PER CARTON  
OVER NET REVENUE PER CARTON  
FOR THE PERIOD JULY 1984-DECEMBER 1985  
SUMMARY

18 MONTHS TOTAL: JULY 1984-DECEMBER 1985

Gross Paid Sales	
Including Excise Tax	\$3.802
Less Excise Tax	<u>1.600</u>
Net Sales	\$2.202
Less Rebates	<u>0.779</u>
NET REVENUES PER CARTON.....	\$1.422
Less Variable Costs:	
Manufacturing Cost	
(adjusted) and	
Freight	\$1.119
Selling Costs	0.322
Variable Overhead	0.100
Carrying Costs	0.140
Manufacturing Variances	<u>0.040</u>
AVERAGE VARIABLE COSTS PER CARTON	<u>\$1.721</u>
EXCESS OF VARIABLE COSTS	
PER CARTON OVER NET REVENUES	
PER CARTON	<u>\$0.298</u>

NOTE: Numbers do not add  
to totals by insignificant  
amounts due to rounding.

BROWN & WILLIAMSON GENERIC CIGARETTES  
EXCESS OF VARIABLE COSTS OVER NET REVENUES  
FOR THE PERIOD JULY 1984-DECEMBER 1985  
(000'S OMITTED)

	3RD QTR 1984	4TH QTR 1984	TOTAL 1984	1ST QTR 1985	2ND QTR 1985	3RD QTR 1985	4TH QTR 1985	TOTAL 1985	TOTAL 84-85
Gross Paid Sales Including									
Excise Tax	\$14,513	\$26,211	\$40,725	\$20,361	\$29,134	\$37,339	\$63,043	\$149,878	\$190,602
Less Excise Tax	6,196	11,174	17,369	8,666	12,371	15,835	25,979	62,851	80,220
Net Sales	8,318	15,038	23,355	11,695	16,763	21,504	37,064	87,027	110,382
Less Rebates:									
Trade Rebates	2,457	4,446	6,903	3,669	5,566	7,843	13,645	30,723	37,626
DAIP Rebates	-	-	-	298	425	544	893	2,161	2,161
Interest Credit on Rebates	(47)	(82)	(129)	(84)	(113)	(148)	(244)	(589)	(718)
Total: Rebates	2,410	4,364	6,774	3,883	5,879	8,239	14,294	32,294	39,069
<b>NET REVENUES .....</b>	<b>\$5,908</b>	<b>\$10,673</b>	<b>\$16,581</b>	<b>\$7,812</b>	<b>\$10,885</b>	<b>\$13,266</b>	<b>\$22,770</b>	<b>\$54,732</b>	<b>\$71,313</b>
Less Variable Costs:									
Variable Manufacturing Cost	\$4,375	\$7,963	\$12,338	\$6,343	\$7,680	\$9,778	\$15,931	\$39,733	\$52,071
Leaf Life Expense (adjusts Leaf to current cost)	92	165	257	(105)	(150)	(192)	(315)	(762)	(505)
SUI Revaluation	-	-	-	-	984	-	-	984	984
Freight, Cartage & Insurance	248	476	724	368	539	713	1,191	2,811	3,535
Total: Manufacturing Cost (adjusted) and Freight	4,714	8,605	13,319	6,606	9,053	10,299	16,808	42,766	56,085
Promotional Costs	399	264	664	115	568	(252)	323	755	1,419
Direct Selling Costs	36	64	100	103	148	189	310	750	850
Displays	256	461	717	358	511	653	1,072	2,594	3,311
Consumer Promotions	54	1,482	1,536	487	1,144	1,815	4,077	7,522	9,059
Generic Leverage Program	-	1,495	1,495	-	-	-	-	-	1,495
Total: Selling Costs	745	3,766	4,511	1,063	2,370	2,406	5,782	11,621	16,132
Variable Overhead	387	698	1,086	542	773	990	1,624	3,928	5,014
Carrying Costs	542	978	1,520	758	1,082	1,386	2,273	5,499	7,019
Manufacturing Variances	651	1,175	1,826	27	39	50	82	198	2,024
<b>TOTAL VARIABLE COSTS</b>	<b>\$7,040</b>	<b>\$15,221</b>	<b>\$22,261</b>	<b>\$8,996</b>	<b>\$13,318</b>	<b>\$15,130</b>	<b>\$26,569</b>	<b>\$64,013</b>	<b>\$86,275</b>
<b>EXCESS OF VARIABLE COSTS OVER NET REVENUES.....</b>	<b>\$1,132</b>	<b>\$4,548</b>	<b>\$5,680</b>	<b>\$1,185</b>	<b>\$2,433</b>	<b>\$1,865</b>	<b>\$3,799</b>	<b>\$9,281</b>	<b>\$14,961</b>

## NOTES:

Total Leaf standard costs as calculated by B&W are included in VARIABLE MANUFACTURING COST.

The Leaf Life Expense for both 1984 and 1985 are adjusted to reflect actual year end data.

Promotional Costs expensed in June 1984 have been combined with the 3rd Quarter 1984 expense.

Numbers may not add to totals by insignificant amounts due to rounding those numbers to thousands.

**BROWN & WILLIAMSON GENERIC CIGARETTES  
EXCESS OF AVERAGE VARIABLE COSTS PER CARTON  
OVER NET REVENUE PER CARTON  
FOR THE PERIOD JULY 1984-DECEMBER 1985**

	3RD QTR 1984	4TH QTR 1984	TOTAL 1984	1ST QTR 1985	2ND QTR 1985	3RD QTR 1985	4TH QTR 1985	TOTAL 1985	TOTAL 84-85
Gross Paid Sales Including									
Excise Tax	\$3.748	\$3.753	\$3.751	\$3.759	\$3.768	\$3.773	\$3,883	\$3,815	\$3.802
Less Excise Tax	1.600	1.600	1.600	1.600	1.600	1.600	1.600	1.600	1.600
Net Sales	2.148	2.153	2.151	2.159	2.168	2.173	2.283	2.215	2.202
Less Rebates:	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Trade Rebates	0.634	0.637	0.636	0.677	0.720	0.792	0.840	0.782	0.750
DAIP Rebates	-	-	-	0.055	0.055	0.055	0.055	0.055	0.043
Interest Credit on Rebates	(0.012)	(0.012)	(0.012)	(0.016)	(0.015)	(0.015)	(0.015)	(0.015)	(0.014)
Total: Rebates	0.622	0.625	0.624	0.717	0.760	0.832	0.880	0.822	0.779
<b>NET REVENUES PER CARTON.....</b>	<b>\$1.526</b>	<b>\$1.528</b>	<b>\$1.527</b>	<b>\$1.442</b>	<b>\$1.408</b>	<b>\$1.340</b>	<b>\$1.402</b>	<b>\$1.393</b>	<b>\$1.422</b>
Less Variable Costs:									
Variable Manufacturing Cost	\$1.130	\$1.140	\$1.137	\$1.171	\$0.993	\$0.988	\$0.981	\$1.011	\$1.039
Leaf Life Expense (adjusts Leaf to current cost)	0.024	0.024	0.024	(0.019)	(0.019)	(0.019)	(0.019)	(0.019)	(0.010)
SUI Revaluation	-	-	-	-	0.127	-	-	0.025	0.020
Freight, Cartage & Insurance	0.064	0.068	0.067	0.068	0.070	0.072	0.073	0.072	0.071
Total: Manufacturing Cost (adjusted) and Freight	1.217	1.232	1.227	1.220	1.171	1.041	1.035	1.089	1.119
Promotional Costs	0.103	0.038	0.061	0.021	0.073	(0.025)	0.020	0.019	0.028
Direct Selling Costs	0.009	0.009	0.009	0.019	0.019	0.019	0.019	0.019	0.017
Displays	0.066	0.066	0.066	0.066	0.066	0.066	0.066	0.066	0.066
Consumer Promotions	0.014	0.212	0.142	0.090	0.148	0.183	0.251	0.191	0.181
Generic Leverage Program	-	0.214	0.138	-	-	-	-	-	0.030
Total: Selling Costs	0.192	0.539	0.416	0.196	0.307	0.243	0.356	0.296	0.322
Variable Overhead	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100
Carrying Costs	0.140	0.140	0.140	0.140	0.140	0.140	0.140	0.140	0.140
Manufacturing Variances	0.168	0.168	0.168	0.005	0.005	0.005	0.005	0.005	0.040
<b>AVERAGE VARIABLE COSTS PER CARTON .....</b>	<b>\$1.818</b>	<b>\$2.180</b>	<b>\$2.051</b>	<b>\$1.661</b>	<b>\$1.722</b>	<b>\$1.529</b>	<b>\$1.636</b>	<b>\$1.630</b>	<b>\$1.721</b>
<b>EXCESS OF AVERAGE VARIABLE COSTS PER CARTON OVER NET REVENUES PER CARTON ...</b>	<b>\$0.292</b>	<b>\$0.651</b>	<b>\$0.523</b>	<b>\$0.219</b>	<b>\$0.315</b>	<b>\$0.188</b>	<b>\$0.234</b>	<b>\$0.236</b>	<b>\$0.298</b>

**NOTES:**

Total Leaf standard costs as calculated by B&W are included in VARIABLE MANUFACTURING COST.  
The Leaf Life Expense for both 1984 and 1985 are adjusted to reflect actual year end data.  
Promotional Costs expensed in June 1984 have been combined with the 3rd Quarter 1984 expense.  
Numbers may not add to totals by insignificant amounts due to rounding.

[In Evidence 10/5/89]

BROWN & WILLIAMSON GENERIC CIGARETTES  
 EXCESS OF VARIABLE COSTS OVER NET REVENUES  
 FOR THE PERIOD JULY 1984-DECEMBER 1985  
 SUMMARY  
 (000'S OMITTED)

	3RD QTR 1984	4TH QTR 1984	TOTAL 1984	1ST QTR 1985	2ND QTR 1985	3RD QTR 1985	4TH QTR 1985	TOTAL 1985	TOTAL 84-85
Gross Paid Sales									
Including Excise Tax	\$14,513	\$26,211	\$40,725	\$20,361	\$29,134	\$37,339	\$63,043	\$149,878	\$190,602
Less Excise Tax	6,196	11,174	17,369	8,666	12,371	15,835	25,979	62,851	80,220
Net Sales	8,318	15,038	23,355	11,695	16,763	21,504	37,064	87,027	110,382
Less Rebates	2,410	4,364	6,774	3,883	5,879	8,239	14,294	32,294	39,069
<b>NET REVENUES .....</b>	<b>\$5,908</b>	<b>\$10,673</b>	<b>\$16,581</b>	<b>\$7,812</b>	<b>\$10,885</b>	<b>\$13,266</b>	<b>\$22,770</b>	<b>\$54,732</b>	<b>\$71,313</b>
Less Variable Costs:									
Manufacturing Cost									
(adj.) and Freight	\$4,714	\$8,605	\$13,319	\$6,606	\$9,053	\$10,299	\$16,808	\$42,766	\$56,085
Selling Costs	745	3,766	4,511	1,063	2,370	2,406	5,782	11,621	16,132
Variable Overhead	387	698	1,086	542	773	990	1,624	3,928	5,014
Carrying Costs	542	978	1,520	758	1,082	1,386	2,273	5,499	7,019
Manufacturing Variances	651	1,175	1,826	27	39	50	82	198	2,024
<b>TOTAL VARIABLE</b>									
<b>COSTS .....</b>	<b>\$7,040</b>	<b>\$15,221</b>	<b>\$22,261</b>	<b>\$8,996</b>	<b>\$13,318</b>	<b>\$15,130</b>	<b>\$26,569</b>	<b>\$64,013</b>	<b>\$86,275</b>
<b>EXCESS OF VARIABLE</b>									
<b>  COSTS OVER NET</b>									
<b>  REVENUES</b>	<b>\$1,132</b>	<b>\$4,548</b>	<b>\$5,680</b>	<b>\$1,185</b>	<b>\$2,433</b>	<b>\$1,865</b>	<b>\$3,799</b>	<b>\$9,281</b>	<b>\$14,961</b>

NOTE: Numbers may not add to totals by insignificant amounts due to rounding those numbers to thousands.

BROWN & WILLIAMSON GENERIC CIGARETTES  
 EXCESS OF AVERAGE VARIABLE COSTS PER CARTON  
 OVER NET REVENUE PER CARTON  
 FOR THE PERIOD JULY 1984-DECEMBER 1985  
 SUMMARY

	3RD QTR 1984	4TH QTR 1984	TOTAL 1984	1ST QTR 1985	2ND QTR 1985	3RD QTR 1985	4TH QTR 1985	TOTAL 1985	TOTAL 84-85
Gross Paid Sales									
Including Excise Tax	\$3.748	\$3.753	\$3.751	\$3.759	\$3.768	\$3.773	\$3,883	\$3,815	\$3.802
Less Excise Tax	1.600	1.600	1.600	1.600	1.600	1.600	1.600	1.600	1.600
Net Sales	2.148	2.153	2.151	2.159	2.168	2.173	2.283	2.215	2.202
Less Rebates	0.622	0.625	0.624	0.717	0.760	0.832	0.880	0.822	0.779
<b>NET REVENUES PER CARTON .....</b>	<b>\$1.526</b>	<b>\$1.528</b>	<b>\$1.527</b>	<b>\$1.442</b>	<b>\$1.408</b>	<b>\$1.340</b>	<b>\$1.402</b>	<b>\$1.393</b>	<b>\$1.422</b>
Less Variable Costs:									
Manufacturing Cost (adjused) and Freight	1.217	1.232	1.227	1.220	1.171	1.041	1.035	1.089	1.119
Selling Costs	0.192	0.539	0.416	0.196	0.307	0.243	0.356	0.296	0.322
Variable Overhead	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100
Carrying Costs	0.140	0.140	0.140	0.140	0.140	0.140	0.140	0.140	0.140
Manufacturing Variances	0.168	0.168	0.168	0.005	0.005	0.005	0.005	0.005	0.040
<b>AVERAGE VARIABLE COSTS PER CARTON ....</b>	<b>\$1.818</b>	<b>\$2.180</b>	<b>\$2.051</b>	<b>\$1.661</b>	<b>\$1.722</b>	<b>\$1.529</b>	<b>\$1.636</b>	<b>\$1.630</b>	<b>\$1.721</b>
<b>EXCESS OF AVERAGE VARIABLE COSTS PER CARTON OVER NET REVENUES PER CARTON</b>	<b>\$0.292</b>	<b>\$0.651</b>	<b>\$0.523</b>	<b>\$0.219</b>	<b>\$0.315</b>	<b>\$0.188</b>	<b>\$0.234</b>	<b>\$0.236</b>	<b>\$0.298</b>

NOTE: Numbers may not add to totals by insignificant amounts due to rounding.

[In Evidence 10/5/89]

DATA FROM PLAINTIFF'S EXHIBIT 3968

GENERIC CIGARETTES  
CALCULATION OF BROWN & WILLIAMSON'S  
FULL VARIABLE MARGIN  
FOR THE PERIOD JULY 1984-DECEMBER 1985  
(Rounded to Nearest Thousand)

18 MONTHS TOTAL: 1984-1985

Gross Paid Sales Including Excise Tax	\$190,602,000
Less: Excise Tax	\$80,220,000
Manufacturing Cost (adjusted) and Freight	<u>56,085,000</u>
	<u>136,305,000</u>
FULL VARIABLE MARGIN	<u><u>\$54,297,000</u></u>

-----

[In Evidence 10/5/89]

GENERIC CIGARETTES  
EXCESS OF BROWN & WILLIAMSON'S  
VARIABLE EXPENDITURES  
OVER FULL VARIABLE MARGIN  
FOR THE PERIOD JULY 1984-DECEMBER 1985  
(Rounded to Nearest Thousand)

18 MONTHS TOTAL: 1984-1985

Full Variable Margin (from chart above).....	\$54,297,000
Less: Rebates	\$39,069,000
Variable Selling Costs	<u>16,132,000</u>
SPENT TO DISPLACE LIGGETT.....	<u>55,201,000</u>
Excess of Amount Spend to Displace Liggett Over Full Variable Margin	904,000
Variable Costs Not Covered by Full Variable Margin:	
Variable Overheads	5,014,000
Carrying Costs	7,019,000
Manufacturing Variances	<u>2,024,000</u>
EXCESS OF VARIABLE EXPENDITURES OVER FULL VARIABLE MARGIN	<u><u>\$14,961,000</u></u>

[In Evidence 10/5/89]

DATA FROM PLAINTIFF'S EXHIBIT 3969

GENERIC CIGARETTES  
CALCULATION OF BROWN & WILLIAMSON'S  
FULL VARIABLE MARGIN PER CARTON  
FOR THE PERIOD JULY 1984-DECEMBER 1985

18 MONTHS: 1984-1985

Gross Paid Sales Including Excise Tax	\$3.802
Less: Excise Tax	\$1.600
Manufacturing Cost (adjusted) and Freight	<u>1.119</u>
	<u>2.719</u>
FULL VARIABLE MARGIN PER CARTON	<u><u>\$1.083</u></u>

[In Evidence 10/5/89]

GENERIC CIGARETTES  
EXCESS OF BROWN & WILLIAMSON'S  
AVERAGE VARIABLE EXPENDITURES PER CARTON  
OVER AVERAGE FULL VARIABLE MARGIN  
PER CARTON  
FOR THE PERIOD JULY 1984-DECEMBER 1985

18 MONTHS: 1984-1985

Full Variable Margin Per Carton (from chart above).....	\$1.083
Less: Rebates Per Carton	\$0.779
Variable Selling Costs Per Carton	<u>0.322</u>
AVERAGE SPENT PER CARTON TO DISPLACE LIGGETT .....	<u>\$1.101</u>
Excess of Average Amount Spent Per Carton to Displace Liggett Over Average Full Variable Margin Per Carton	\$0.018
Average Variable Costs Per Carton Not Covered by Average Variable Margin Per Carton:	
Variable Overhead	0.100
Carrying Costs	0.140
Manufacturing Variances	<u>0.040</u>
EXCESS OF AVERAGE VARIABLE EXPENDITURES PER CARTON OVER AVERAGE FULL VARIABLE MARGIN PER CARTON	<u><u>\$0.298</u></u>

[In Evidence 2/2/90]

MSA CIGARETTE INDUSTRY REPORT  
U.S. TOTAL REPORT  
DECEMBER 1989

Prepared For  
BROWN & WILLIAMSON TOBACCO CORPORATION  
[LOGO]  
MANAGEMENT SCIENCE ASSOCIATES, INC.  
MARKET SCIENCE ASSOCIATES

\* \* \*

BRANDS INCLUDED IN:

VALUE FOR MONEY SEGMENT

Plain/Private Label

Liggett Generics - All  
B&W Generics - All  
PM Generics - All  
RJR Generics - All

Low Price Branded 20's

Doral KSF (New)  
Doral KSF Men (New)  
Doral 100  
Doral 100 Men  
Doral Full Flavor 85 Men  
Doral Full Flavor KSF  
Doral Full Flavor 100  
Doral Full Flavor 100  
Men  
Doral Full Flavor KSF  
Box

Low Price Branded 20's  
(cont'd)

Falcon Light KSF  
 Falcon Light KSF Men  
 Falcon Light 100  
 Falcon Light 100 Men  
 Malibu 100  
 Malibu 100 Men  
 Malibu Light 100  
 Malibu KSF  
 Malibu KSF Men  
 Malibu Light KSF  
 Malibu ULT 100  
 Magna FF KSF (PV)  
 Magna FF KSF Box (PV)  
 Magna Lt KSF (PV)  
 Magna Lt KSF Box (PV)  
 American Light KSF  
 American Light 100  
 American Light 100 Men  
 American Filter 85  
 American Filter 100  
 Chesterfield Lt KSF  
 Chesterfield Lt 100  
 Savvy Light 100  
 Savvy Light 100 Men  
 Savvy Ultra Light 100  
 Alpine KSF Men (PV)  
 Alpine Light KSF Men  
 (PV)  
 Alpine 100 Men (PV)

Low Price Branded 20's  
(cont'd)

Alpine Light 100 Men  
 (PV)  
 Alpine KSF Box Men  
 (PV)  
 Alpine Light Box Men  
 (PV)  
 Viceroy KSF (PV)  
 Viceroy Light KSF (PV)  
 Viceroy 100 (PV)  
 Viceroy Light 100 (PV)  
 Misty Slim Lt 100 Box  
 (PV)  
 Misty Slim Lt 100  
 Box Men (PV)  
 Lucky Strike Lotar KSF  
 Lucky Strike Lotar KSF  
 Box  
 Lucky Strike Lotar 100  
 Lucky Strike Light KSF  
 Lucky Strike Light 100  
 Belair KSF (PV)  
 Belair Lt KSF (PV)  
 Belair 100 (PV)  
 Belair Lt 100 (PV)  
 Pall Mall Red KSF  
 Harley-Davidson KSF  
 (PV)  
 Harley-Davidson LT KSF  
 (PV)

Low Price Branded 20's  
(cont'd)

Bucks FF KSF  
 Bucks LT KSF

Third Price Point

Pyramid KS NF  
 Pyramid FF KSF  
 Pyramid FF KSF Men  
 Pyramid LT KSF  
 Pyramid FF 100  
 Pyramid FF 100 Men  
 Pyramid LT 100  
 Pyramid Lt 100 Men  
 Pyramid ULT LT 100  
 Montclair KSF (PV)  
 Montclair Lt KSF (PV)  
 Montclair Lt KSF Men  
 (PV)  
 Montclair 100 (PV)  
 Montclair Lt 100 (PV)  
 Montclair Lt 100 Men  
 (PV)  
 Bristol Lt KSF  
 Bristol Lt KSF Men  
 Bristol Lt 100  
 Bristol Lt 100 Men

Mid-Price 20's

Stride KSF  
 Stride 100  
 Stride 100 Men

Mid-Price 20's (Cont'd.)

Stride Dlx Lt KSF  
 Stride Dlx Lt 100  
 Stride Dlx Lt 100 Mn

Lower Price 30's

L + M Lights 100 (30)

Lower Price 25's

Players Lt KSF (25)  
 Players Lt KSF Men (25)  
 Players Lt 100 (25)  
 Players Lt 100 Men (25)  
 Players Lt KSF 250  
 Players Lt KSF Men 250  
 Players Lt 100 250  
 Players Lt 100 Men 250  
 Richland KSF 225  
 Richland KSF 250  
 Richland KSF Men 225  
 Richland KSF Men 250  
 Richland Lights KSF 250  
 Richland 100 250  
 Richland 100 Men  
 Richland Lights 100 250

25's SEGMENTLower Price 25's

Century KSF  
 Century Lights KSF  
 Century 100

Lower Price 25's (Cont'd.)Standard Price 25's

Century Lights 100  
 Century Lights 100 Men  
 Kim 95 Box (25)  
 Kim 95 Men Box (25)  
 Richland KSF 225  
 Richland KSF 250  
 Richland KSF Men 225  
 Richland KSF Men 250  
 Richland Lights KSF 250  
 Richland 100 250  
 Richland 100 Men  
 Richland Lights 100 250  
 Century KSF  
 Century Lights KSF  
 Century 100  
 Century Lights 100  
 Century Lights 100 Men  
 Players Lt KSF (25)  
 Players Lt KSF Men (25)  
 Players Lt 100 (25)  
 Players Lt 100 Men (25)  
 Players Lt KSF 250  
 Players Lt KSF Men 250  
 Players Lt 100 250  
 Players Lt 100 Men 250  
 Kim 95 Box (25)  
 Kim 95 Men Box (25)

Marlboro KSF (25)  
 Marlboro Lights KSF (25)  
 Newport KSF Men (25)  
 Newport 100 Men (25)  
 Pall Mall KS NF (25)  
 Kool KSF Men (25)  
 Kool Mild KSF Men (25)

[In Evidence 2/2/90]

## CIGARETTE MARKET SHARES

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989  
TOTAL UNITED STATES

	YEAR TO DATE		CURRENT MO.		PREVIOUS MO.		3 MONTH MVG.		6 MONTH MVG.		12 MONTH MVG.	
	DEC. 1989	SHARE DIF	DEC. 1989	SHARE DIF	NOV. 1989	SHARE DIF	DEC. 1989	SHARE DIF	DEC. 1989	SHARE DIF	DEC. 1989	SHARE DIF
INDUSTRY VOLUME - ANN. RATE	521.1		684.5		613.5		616.4		531.3		523.6	
COMPANY												
PHILIP MORRIS	41.93	2.62	43.36	10.93	42.23	1.98	41.38	1.99	43.30	3.55	41.93	2.62
REYNOLDS	28.54	-3.23	20.75	-16.60	27.29	-3.18	26.39	-3.74	26.42	-5.19	28.54	-3.23
BROWN + WILLIAMSON	11.36	0.41	17.57	4.19	11.58	0.59	13.50	1.64	12.32	1.27	11.36	0.41
LORILLARD	7.91	-0.28	9.65	0.05	8.48	0.08	8.85	-0.69	7.72	-0.45	7.91	-0.28
AMERICAN	6.99	0.04	5.62	0.92	7.00	0.14	6.52	0.24	6.88	0.17	6.99	0.04
LIGGETT + MYERS	3.25	0.45	3.03	0.51	3.39	0.39	3.33	0.55	3.35	0.64	3.25	0.45
ALL OTHER COMPANIES	0.02	0.00	0.02	0.00	0.02	0.00	0.02	0.00	0.02	0.00	0.02	0.00
SECTED BRANDS												
BARCLAY	0.29	-0.04	0.43	0.01	0.32	-0.03	0.35	-0.03	0.30	-0.02	0.29	-0.04
BELAIR	0.48	0.00	0.70	0.12	0.53	0.05	0.60	0.06	0.53	0.06	0.48	0.00
CAPRI	0.57	0.07	0.83	0.17	0.59	0.00	0.72	0.12	0.66	0.10	0.57	0.07
GENERIC (B+W)	1.14	-0.21	1.38	-0.28	1.04	-0.27	1.17	-0.31	1.14	-0.22	1.14	-0.21
KOOL	5.96	-0.07	10.02	2.30	6.07	0.01	7.26	0.67	6.64	0.48	5.96	-0.07
RALEIGH	0.65	-0.07	0.93	0.03	0.67	-0.06	0.74	-0.07	0.67	-0.04	0.65	-0.07
RICHLAND 20	0.81	0.27	1.14	0.42	0.85	0.22	0.97	0.35	0.89	0.27	0.81	0.27
RICHLAND 25	0.16	-0.13	0.19	-0.08	0.15	-0.05	0.16	-0.07	0.15	-0.06	0.16	-0.13
VICEROY	1.29	0.64	1.93	1.53	1.35	0.77	1.52	0.95	1.32	0.75	1.29	0.64

[In Evidence 2/2/90]

## CIGARETTE MARKET SHARES

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989  
TOTAL UNITED STATES

	YEAR TO DATE		CURRENT MO.		PREVIOUS MO.		3 MONTH MVG.		6 MONTH MVG.		12 MONTH MVG.	
	DEC. 1989	SHARE DIF	DEC. 1989	SHARE DIF	NOV. 1989	SHARE DIF	DEC. 1989	SHARE DIF	DEC. 1989	SHARE DIF	DEC. 1989	SHARE DIF
SEGMENTS												
FLAVOR:...												
MENTHOL	27.20	-0.38	30.45	-0.75	27.44	0.22	28.62	-0.10	27.40	-0.15	27.20	-0.38
NON- MENTHOL	72.78	0.38	69.53	0.75	72.54	-0.22	71.36	0.10	72.57	0.15	72.78	0.38
LENGTH:...												
80-85MM	57.09	-0.01	58.70	1.33	57.07	0.07	57.36	0.07	57.27	0.01	57.09	-0.01
100MM	38.65	0.27	37.87	-0.06	38.75	0.29	38.61	0.34	38.65	0.42	38.65	0.27
100+MM	2.45	0.01	2.05	-0.38	2.44	-0.07	2.34	-0.11	2.37	-0.06	2.45	0.01
70-72MM	1.80	-0.27	1.36	-0.88	1.72	-0.29	1.67	-0.29	1.68	-0.37	1.80	-0.27
FILTRATION:...												
FILTER	95.67	0.39	96.49	0.71	95.76	0.45	96.00	0.45	95.81	0.41	95.67	0.39
NON-FILTER	4.30	-0.39	3.49	-0.71	4.22	-0.45	3.98	-0.45	4.17	-0.41	4.30	-0.39

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989  
TOTAL UNITED STATES

[illegible]

[illegible]

COMPANY SHARE OF MARKET - SHARE OF SEGMENT  
SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989  
TOTAL UNITED STATES

[illegible]

[In Evidence 2/2/90]

COMPANY SHARE OF MARKET - SHARE OF SEGMENT  
 SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989  
 TOTAL UNITED STATES

	..... SHARE OF MARKET .....						..... SHARE OF SEGMENT .....					
	YEAR TO DATE		3 MONTH MVG		12 MONTH MVG		YEAR TO DATE		3 MONTH MVG.		12 MONTH MVG.	
	DEC.	SHARE	DEC.	SHARE	DEC.	SHARE	DEC.	SHARE	DEC.	SHARE	DEC.	SHARE
	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF
VALUE 25'S:												
INDUSTRY	0.89	-0.31	0.82	-0.30	0.89	-0.31	100.00		100.00		100.00	
AMERICAN	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
BROWN +												
WILLIAMSON	0.16	-0.13	0.16	-0.07	0.16	-0.13	17.63	-6.58	19.97	-0.77	17.63	-6.58
LIGGETT +												
MYERS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
LORILLARD	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
PHILIP MORRIS	0.18	-0.06	0.16	-0.07	0.18	-0.06	20.36	0.34	19.45	-1.18	20.36	0.34
REYNOLDS	0.55	-0.12	0.50	-0.15	0.55	-0.12	62.01	6.24	60.58	1.95	62.01	6.24

RANK BASED ON THREE MONTH SHARE

RANK BASED ON THREE MONTH SHARE

BRAND FAMILIES OVER 1% SHARE OF MARKET

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989  
TOTAL UNITED STATES

	YEAR TO DATE		CURRENT MO.		PREVIOUS MO.		3 MONTH MVG.		6 MONTH MVG.		12 MONTH MVG.	
	DEC.	SHARE	DEC.	SHARE	NOV.	SHARE	DEC.	SHARE	DEC.	SHARE	DEC.	SHARE
	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF
MARLBORO	26.36	1.47	27.89	7.79	26.48	1.12	26.07	1.63	27.34	2.18	26.36	1.47
WINSTON	9.01	-1.74	6.56	-6.50	8.42	-1.75	8.24	-1.88	8.20	-2.40	9.01	-1.74
KOOL	5.96	-0.07	10.02	2.30	6.07	0.01	7.26	0.67	6.64	0.48	5.96	-0.07
SALEM	6.24	-1.03	4.50	-4.26	5.88	-1.13	5.71	-1.16	5.68	-1.45	6.24	-1.03
NEWPORT	4.65	0.26	5.91	0.64	5.02	0.64	5.30	0.04	4.61	0.10	4.65	0.26
B + H	3.88	-0.09	3.83	0.64	3.90	-0.09	3.75	-0.29	3.92	-0.01	3.88	-0.09
CAMEL	3.86	-0.47	2.83	-2.33	3.69	-0.62	3.65	-0.69	3.64	-0.78	3.86	-0.47
MERIT	3.84	0.01	3.75	0.67	3.80	-0.15	3.64	-0.24	3.88	0.10	3.84	0.01
DORAL	3.60	0.25	2.89	-0.63	3.64	0.65	3.48	0.65	3.42	0.04	3.60	0.25
VIRGINIA												
SLIMS	3.16	0.14	3.10	0.67	3.32	0.19	3.20	0.13	3.33	0.32	3.16	0.14
PALL MALL	2.66	-0.23	2.11	0.18	2.72	-0.09	2.41	-0.17	2.63	-0.12	2.66	-0.23
CAMBRIDGE	2.27	0.52	2.22	0.56	2.29	0.32	2.33	0.38	2.39	0.41	2.27	0.52
VANTAGE	2.53	-0.43	1.79	-1.76	2.42	-0.47	2.32	-0.51	2.34	-0.59	2.53	-0.43
KENT	2.06	-0.35	2.37	-0.42	2.18	-0.42	2.23	-0.52	1.95	-0.38	2.06	-0.35
CARLTON	1.72	0.00	1.42	0.25	1.68	-0.01	1.60	0.06	1.63	-0.02	1.72	0.00
VICEROY	1.29	0.64	1.93	1.53	1.35	0.77	1.52	0.95	1.32	0.75	1.29	0.64
GENERIC (BW)	1.14	-0.21	1.38	-0.28	1.04	-0.27	1.17	-0.31	1.14	-0.22	1.14	-0.21
RICHLAND	0.97	0.14	1.33	0.34	1.00	0.17	1.14	0.28	1.04	0.22	0.97	0.14
PYRAMID	0.86	0.86	1.05	1.04	1.11	1.11	1.10	1.10	1.08	1.08	0.86	0.86
GENERIC (LIG)	1.22	-0.42	0.92	-0.36	1.05	-0.35	1.04	-0.36	1.11	-0.37	1.22	-0.42
MORE	1.07	-0.08	0.70	-0.62	1.01	-0.09	0.95	-0.16	0.97	-0.15	1.07	-0.08
TRUE	0.85	-0.12	1.00	-0.12	0.92	-0.11	0.95	-0.15	0.82	-0.13	0.85	-0.12
NOW	0.97	-0.05	0.69	-0.40	0.95	-0.07	0.90	-0.12	0.92	-0.10	0.97	-0.05

[In Evidence 2/2/90]

RANK BASED ON THREE MONTH SHARE

RANK BASED ON THREE MONTH SHARE

BRAND FAMILIES OVER 1% SHARE OF MARKET

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989  
 TOTAL UNITED STATES -

	YEAR TO DATE DEC. 1989	SHARE DIF	CURRENT MO. DEC. 1989	SHARE DIF	PREVIOUS MO. NOV. 1989	SHARE DIF	3 MONTH MVG. DEC. 1989	SHARE DIF	6 MONTH MVG. DEC. 1989	SHARE DIF	12 MONTH MVG. DEC. 1989	SHARE DIF
ALL OTHER												
BRANDS WITH SHARES LESS THAN 1.00%	9.82	0.99	9.81	1.06	10.07	0.64	10.06	0.68	9.98	1.02	9.82	0.99

COMPANY/BRAND RANKED ON THREE MONTH SHARE

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989  
TOTAL UNITED STATES

[illegible]

[In Evidence 2/2/90]

COMPANY/BRAND RANKED ON THREE MONTH SHARE

COMPANY/BRAND RANKED ON THREE MONTH SHARE

## BRAND SHARE ANALYSIS

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989

TOTAL UNITED STATES

	YEAR TO DATE		CURRENT MO.		PREVIOUS MO.		3 MONTH MVG.		6 MONTH MVG.		12 MONTH MVG.	
	DEC. 1989	SHARE DIF	DEC. 1989	SHARE DIF	NOV. 1989	SHARE DIF	DEC. 1989	SHARE DIF	DEC. 1989	SHARE DIF	DEC. 1989	SHARE DIF
B + H	3.88	-0.09	3.83	0.64	3.90	-0.09	3.75	-0.29	3.92	-0.01	3.88	-0.09
100 B	0.12	0.00	0.12	0.02	0.12	0.00	0.11	0.00	0.12	0.00	0.12	0.00
100	0.70	-0.03	0.69	0.10	0.69	-0.02	0.67	-0.07	0.70	-0.02	0.70	-0.03
100 M B	0.08	0.00	0.08	0.02	0.08	0.00	0.08	0.00	0.08	0.00	0.08	0.00
100 M	0.81	-0.02	0.79	0.13	0.81	-0.02	0.77	-0.06	0.81	-0.01	0.81	-0.02
MULTI-												
FILTER KSF	0.03	0.00	0.03	0.00	0.03	0.00	0.03	-0.01	0.03	0.00	0.03	0.00
KSF B	0.01	0.00	0.01	0.00	0.01	0.00	0.01	0.00	0.01	0.00	0.01	0.00
LT 100												
B (NEW)	0.06	0.00	0.05	0.01	0.06	0.00	0.05	0.00	0.05	0.00	0.06	0.00
LT 100	0.50	-0.02	0.49	0.08	0.50	-0.02	0.48	-0.05	0.50	-0.01	0.50	-0.02
DLX LT 100 B	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
CLASSIC LT												
100 B	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
MULTI-												
FILTER KSF M	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
LT 100 M B												
(NEW)	0.05	0.00	0.05	0.00	0.05	0.00	0.05	0.00	0.05	0.00	0.05	0.00
LT 100 M	0.44	-0.01	0.43	0.07	0.44	-0.01	0.43	-0.04	0.45	0.00	0.44	-0.01
DLX LT 100 M B	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
CLASSIC LT												
100 M B	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
70 FLT B	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
DLX ULT												
100 B	0.64	-0.01	0.64	0.12	0.65	-0.02	0.62	-0.04	0.65	0.01	0.64	-0.01
DLX ULT												
100 M B	0.46	0.01	0.46	0.09	0.46	0.00	0.45	-0.02	0.47	0.02	0.46	0.01

[In Evidence 2/2/90]

COMPANY/BRAND RANKED ON THREE MONTH SHARE

COMPANY/BRAND RANKED ON THREE MONTH SHARE

## BRAND SHARE ANALYSIS

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989

TOTAL UNITED STATES

	YEAR TO DATE		CURRENT MO.		PREVIOUS MO.		3 MONTH MVG.		6 MONTH MVG.		12 MONTH MVG.	
	DEC.	SHARE	DEC.	SHARE	NOV.	SHARE	DEC.	SHARE	DEC.	SHARE	DEC.	SHARE
	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF
MERIT	3.84	0.01	3.75	0.67	3.80	-0.15	3.64	-0.24	3.88	0.10	3.84	0.01
DE-NIC KSF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KSF B	0.27	0.01	0.27	0.05	0.27	0.00	0.26	-0.01	0.28	0.01	0.27	0.01
KSF	0.94	-0.07	0.92	0.12	0.91	-0.12	0.88	-0.13	0.94	-0.06	0.94	-0.07
100	0.73	-0.04	0.70	0.09	0.71	-0.07	0.68	-0.09	0.72	-0.04	0.73	-0.04
DE-NIC KSF M	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KSF M	0.15	-0.01	0.14	0.01	0.14	-0.02	0.14	-0.02	0.14	-0.01	0.15	-0.01
100 M	0.13	-0.01	0.12	0.01	0.13	-0.01	0.12	-0.02	0.13	0.00	0.13	-0.01
DE-NIC												
ULT KSF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
ULT KSF B	0.14	0.03	0.14	0.05	0.15	0.03	0.14	0.03	0.15	0.05	0.14	0.03
ULT KSF	0.64	0.05	0.64	0.15	0.64	0.02	0.61	0.00	0.65	0.06	0.64	0.05
ULT 100 B	0.09	0.00	0.08	0.02	0.09	0.01	0.08	0.01	0.09	0.02	0.09	0.00
ULT 100	0.49	0.04	0.49	0.12	0.49	0.01	0.47	0.00	0.50	0.05	0.49	0.04
DE-NIC ULT												
KSF M	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
ULT KSF M	0.14	0.01	0.13	0.03	0.14	0.01	0.13	0.00	0.14	0.01	0.14	0.01
ULT 100 M	0.12	0.01	0.12	0.02	0.12	0.00	0.12	0.00	0.12	0.01	0.12	0.01
VIRGINIA												
SLIMS	3.16	0.14	3.10	0.67	3.32	0.19	3.20	0.13	3.33	0.32	3.16	0.14
100	0.51	0.00	0.51	0.09	0.51	-0.01	0.49	-0.03	0.52	0.01	0.51	0.00
LT 100 B	0.48	-0.01	0.46	0.07	0.47	-0.04	0.44	-0.05	0.47	-0.01	0.48	-0.01
LT 120 B	0.32	0.02	0.32	0.07	0.33	0.01	0.31	0.00	0.33	0.02	0.32	0.02
100 M	0.43	-0.01	0.43	0.07	0.43	-0.01	0.41	-0.03	0.43	0.00	0.43	-0.01
LT 100 M B	0.53	-0.01	0.52	0.08	0.52	-0.05	0.50	-0.06	0.53	-0.01	0.53	-0.01
LT 120 M B	0.24	0.00	0.24	0.04	0.24	0.00	0.23	-0.01	0.24	0.01	0.24	0.00
ULT 100 B	0.28	0.01	0.27	0.06	0.29	0.01	0.27	0.00	0.29	0.02	0.28	0.01
SSLM 100 B	0.07	0.07	0.07	0.07	0.13	0.13	0.16	0.16	0.14	0.14	0.07	0.07
ULT 100 M B	0.24	0.01	0.23	0.05	0.24	0.01	0.23	0.00	0.25	0.02	0.24	0.01
SSLM 100 M B	0.06	0.06	0.06	0.06	0.15	0.15	0.15	0.15	0.13	0.13	0.06	0.06

[In Evidence 2/2/90]

COMPANY/BRAND RANKED ON THREE MONTH SHARE

COMPANY/BRAND RANKED ON THREE MONTH SHARE

## BRAND SHARE ANALYSIS

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989  
TOTAL UNITED STATES

	YEAR TO DATE		CURRENT MO.		PREVIOUS MO.		3 MONTH MVG.		6 MONTH MVG.		12 MONTH MVG.	
	DEC. 1989	SHARE DIF	DEC. 1989	SHARE DIF	NOV. 1989	SHARE DIF	DEC. 1989	SHARE DIF	DEC. 1989	SHARE DIF	DEC. 1989	SHARE DIF
CAMBRIDGE	2.27	0.52	2.22	0.56	2.29	0.32	2.33	0.38	2.39	0.41	2.27	0.52
FF KSF	0.26	0.08	0.26	0.07	0.27	0.06	0.28	0.06	0.28	0.07	0.26	0.08
FF 100	0.34	0.11	0.34	0.11	0.35	0.08	0.36	0.09	0.37	0.10	0.34	0.11
LT KSF	0.36	0.07	0.35	0.08	0.36	0.03	0.36	0.05	0.38	0.05	0.36	0.07
LT 100	0.52	0.11	0.51	0.14	0.52	0.07	0.53	0.08	0.55	0.09	0.52	0.11
LT KSF M	0.13	0.01	0.12	0.01	0.13	-0.01	0.13	0.00	0.13	-0.01	0.13	0.01
LT 100 M	0.29	0.05	0.28	0.05	0.30	0.02	0.30	0.02	0.30	0.03	0.29	0.05
KSF B	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KSF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
100 (PV)	0.36	0.09	0.36	0.11	0.36	0.06	0.37	0.08	0.38	0.08	0.36	0.09
100	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
PARLIAMENT	0.89	0.02	0.89	0.18	0.88	0.02	0.85	-0.02	0.90	0.03	0.89	0.02
LT 100	0.36	0.00	0.35	0.06	0.36	0.01	0.34	-0.02	0.36	0.01	0.36	0.00
LT KSF B	0.34	0.03	0.36	0.10	0.34	0.03	0.33	0.02	0.35	0.03	0.34	0.03
LT KSF	0.18	-0.01	0.18	0.02	0.19	-0.01	0.18	-0.02	0.18	0.00	0.18	-0.01

[In Evidence 2/2/90]

COMPANY/BRAND RANKED ON THREE MONTH SHARE

COMPANY/BRAND RANKED ON THREE MONTH SHARE

## BRAND SHARE ANALYSIS

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989  
TOTAL UNITED STATES

	YEAR TO DATE		CURRENT MO.		PREVIOUS MO.		3 MONTH MVG.		6 MONTH MVG.		12 MONTH MVG.	
	DEC.	SHARE	DEC.	SHARE	NOV.	SHARE	DEC.	SHARE	DEC.	SHARE	DEC.	SHARE
	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF
ALPINE	0.62	0.52	0.48	-0.11	0.53	0.50	0.54	0.28	0.57	0.41	0.62	0.52
KSF M B PV	0.01	0.01	0.01	-0.01	0.01	0.01	0.01	0.00	0.01	0.00	0.01	0.01
KSF M PV	0.14	0.12	0.10	-0.04	0.11	0.11	0.11	0.05	0.12	0.08	0.14	0.12
KSF M	0.00	-0.02	0.00	0.00	0.00	-0.01	0.00	-0.01	0.00	-0.01	0.00	-0.02
100 M PV	0.15	0.13	0.12	-0.02	0.13	0.12	0.13	0.07	0.14	0.11	0.15	0.13
LT KSF												
M B PV	0.01	0.01	0.01	-0.01	0.00	0.00	0.01	0.00	0.01	0.00	0.01	0.01
LT KSF M PV	0.13	0.11	0.10	-0.04	0.11	0.11	0.11	0.05	0.12	0.08	0.13	0.11
LT 100 M PV	0.18	0.16	0.15	0.02	0.17	0.16	0.17	0.11	0.18	0.15	0.18	0.16
GENERIC (PM)	0.32	0.07	0.30	0.12	0.49	0.17	0.37	0.10	0.34	0.09	0.32	0.07
NF KS	0.01	0.01	0.02	0.01	0.01	0.01	0.02	0.01	0.01	0.01	0.01	0.01
FF KSF	0.04	0.01	0.04	0.01	0.07	0.03	0.05	0.02	0.04	0.01	0.04	0.01
FF 100	0.04	0.01	0.03	0.01	0.07	0.02	0.05	0.01	0.05	0.01	0.04	0.01
LT KSF B	0.01	0.00	0.02	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.00
LT KSF	0.04	0.01	0.03	0.01	0.07	0.03	0.04	0.01	0.04	0.01	0.04	0.01
LT 100	0.07	0.02	0.06	0.02	0.11	0.05	0.08	0.03	0.07	0.02	0.07	0.02
LT KSF M	0.02	0.00	0.01	0.00	0.02	0.01	0.02	0.00	0.02	0.00	0.02	0.00
LT 100 M	0.03	0.00	0.03	0.01	0.04	0.01	0.03	0.00	0.03	0.00	0.03	0.00
ULT KSF	0.01	0.00	0.01	0.00	0.02	0.00	0.01	0.00	0.01	0.00	0.01	0.00
ULT 100	0.05	0.01	0.05	0.02	0.06	0.01	0.05	0.01	0.05	0.01	0.05	0.01

[In Evidence 2/2/90]

COMPANY/BRAND RANKED ON THREE MONTH SHARE

COMPANY/BRAND RANKED ON THREE MONTH SHARE

## BRAND SHARE ANALYSIS

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989  
TOTAL UNITED STATES

	YEAR TO DATE		CURRENT MO.		PREVIOUS MO.		3 MONTH MVG.		6 MONTH MVG.		12 MONTH MVG.	
	DEC.	SHARE	DEC.	SHARE	NOV.	SHARE	DEC.	SHARE	DEC.	SHARE	DEC.	SHARE
	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF
PLAYERS	0.25	-0.07	0.23	-0.02	0.24	-0.08	0.23	-0.09	0.24	-0.07	0.25	-0.07
70 NF B	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KSF B	0.02	-0.01	0.02	0.00	0.02	-0.01	0.02	-0.01	0.02	0.00	0.02	-0.01
100 B	0.02	0.00	0.02	0.00	0.02	0.00	0.02	0.00	0.02	0.00	0.02	0.00
LT KSF 250	0.03	-0.01	0.03	-0.01	0.03	-0.02	0.03	-0.02	0.03	-0.02	0.03	-0.01
LT KSF (25)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
LT 100 250	0.09	-0.02	0.08	-0.01	0.08	-0.02	0.08	-0.03	0.08	-0.03	0.09	-0.02
LT 100 (25)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KSF M B	0.01	0.00	0.01	0.00	0.01	0.00	0.01	0.00	0.01	0.00	0.01	0.00
100 M B	0.01	0.00	0.01	0.00	0.01	0.00	0.01	0.00	0.01	0.00	0.01	0.00
LT KSF M 250	0.02	-0.01	0.01	0.00	0.01	-0.01	0.01	-0.01	0.01	-0.01	0.02	-0.01
LT KSF M												
(25)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
LT 100 M 250	0.05	-0.01	0.05	0.00	0.05	-0.02	0.04	-0.02	0.05	-0.01	0.05	-0.01
LT 100 M (25)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
SARATOGA	0.21	-0.02	0.20	0.01	0.21	-0.02	0.20	-0.03	0.21	-0.01	0.21	-0.02
120 B	0.14	-0.01	0.13	0.01	0.14	-0.01	0.14	-0.02	0.14	-0.01	0.14	-0.01
120 M B	0.07	0.00	0.06	0.00	0.07	-0.01	0.07	-0.01	0.07	0.00	0.07	0.00
BRISTOL	0.04	0.04	0.39	0.39	0.00	0.00	0.14	-0.14	0.08	0.08	0.04	0.04
LT KSF PV	0.01	0.01	0.12	0.12	0.00	0.00	0.04	0.04	0.02	0.02	0.01	0.01
LT 100 PV	0.01	0.01	0.12	0.12	0.00	0.00	0.04	0.04	0.02	0.02	0.01	0.01
LT KSF M PV	0.01	0.01	0.08	0.08	0.00	0.00	0.03	0.03	0.02	0.02	0.01	0.01
LT 100 M PV	0.01	0.01	0.08	0.08	0.00	0.00	0.03	0.03	0.02	0.02	0.01	0.01

[In Evidence 2/2/90]

COMPANY/BRAND RANKED ON THREE MONTH SHARE

COMPANY/BRAND RANKED ON THREE MONTH SHARE

## BRAND SHARE ANALYSIS

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989

TOTAL UNITED STATES

	YEAR TO DATE		CURRENT MO.		PREVIOUS MO.		3 MONTH MVG.		6 MONTH MVG.		12 MONTH MVG.	
	DEC.	SHARE	DEC.	SHARE	NOV.	SHARE	DEC.	SHARE	DEC.	SHARE	DEC.	SHARE
	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF
RIO	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KSF M	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
100 M	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
ROTHMANS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
BLUE KSF B	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
RED KSF B	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
ST. MORITZ	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
100	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
100 MEN	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL												
R J												
REYNOLDS	28.54	-3.23	20.75	-16.60	27.29	-3.18	26.39	-3.74	26.42	-5.19	28.54	-3.23
WINSTON	9.01	-1.74	6.56	-6.50	8.42	-1.75	8.24	-1.88	8.20	-2.40	9.01	-1.74
KSF B	0.41	-0.07	0.30	-0.31	0.41	-0.07	0.39	-0.08	0.39	-0.10	0.41	-0.07
KSF	3.66	-0.78	2.72	-2.74	3.38	-0.82	3.35	-0.81	3.34	-1.03	3.66	-0.78
100	1.30	-0.30	0.93	-1.03	1.20	-0.28	1.18	-0.30	1.16	-0.40	1.30	-0.30
LT KSF B	0.17	-0.01	0.12	-0.05	0.17	0.00	0.16	-0.02	0.17	-0.01	0.17	-0.01
LT KSF	1.68	-0.34	1.22	-1.25	1.55	-0.35	1.53	-0.36	1.52	-0.47	1.68	-0.34
LT 100 B	0.08	-0.01	0.06	-0.03	0.09	0.00	0.08	-0.01	0.09	0.00	0.08	-0.01
LT 100	1.14	-0.20	0.82	-0.81	1.07	-0.20	1.04	-0.22	1.02	-0.29	1.14	-0.20
ULT KSF	0.25	0.01	0.16	-0.05	0.22	0.00	0.21	-0.02	0.21	-0.02	0.25	0.01
ULT 100	0.32	-0.05	0.23	-0.23	0.32	-0.05	0.30	-0.06	0.31	-0.07	0.32	-0.05

[In Evidence 2/2/90]

COMPANY/BRAND RANKED ON THREE MONTH SHARE

COMPANY/BRAND RANKED ON THREE MONTH SHARE

## BRAND SHARE ANALYSIS

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989  
TOTAL UNITED STATES

	YEAR TO DATE		CURRENT MO.		PREVIOUS MO.		3 MONTH MVG.		6 MONTH MVG.		12 MONTH MVG.	
	DEC.	SHARE	DEC.	SHARE	NOV.	SHARE	DEC.	SHARE	DEC.	SHARE	DEC.	SHARE
	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF
SALEM	6.24	-1.03	4.50	-4.26	5.88	-1.13	5.71	-1.16	5.68	-1.45	6.24	-1.03
KSF M	1.40	-0.28	1.03	-1.02	1.31	-0.27	1.29	-0.27	1.28	-0.35	1.40	-0.28
100 M	0.93	-0.20	0.68	-0.71	0.88	-0.20	0.86	-0.20	0.84	-0.27	0.93	-0.20
KSF M B (2)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
LT KSF M	1.46	-0.27	1.05	-1.06	1.36	-0.31	1.32	-0.31	1.32	-0.37	1.46	-0.27
LT 100 M B	0.10	-0.02	0.06	-0.05	0.10	-0.01	0.09	-0.03	0.10	-0.01	0.10	-0.02
LT 100 M	1.13	-0.22	0.81	-0.83	1.05	-0.25	1.02	-0.25	1.02	-0.31	1.13	-0.22
SLIM LT												
100 M B	0.44	-0.02	0.33	-0.25	0.44	-0.03	0.42	-0.03	0.42	-0.05	0.44	-0.02
ULT KSF M	0.31	0.02	0.21	-0.05	0.29	-0.01	0.28	-0.02	0.28	-0.02	0.31	0.02
ULT 100 M	0.46	-0.04	0.34	-0.28	0.45	-0.06	0.43	-0.05	0.42	-0.08	0.46	-0.04
CAMEL	3.86	-0.47	2.83	-2.33	3.69	-0.62	3.65	-0.69	3.64	-0.78	3.86	-0.47
70 NF	1.21	-0.24	0.89	-0.89	1.13	-0.27	1.12	-0.26	1.11	-0.34	1.21	-0.24
KSF BOX (2)	0.27	0.04	0.22	-0.03	0.27	0.01	0.27	-0.05	0.27	-0.02	0.27	0.04
KSF	0.93	-0.18	0.66	-0.66	0.86	-0.22	0.87	-0.22	0.87	-0.25	0.93	-0.18
FLT 100	0.06	0.00	0.04	-0.02	0.07	0.00	0.06	-0.01	0.06	0.00	0.06	0.00
LT KSF B	0.24	0.04	0.20	0.01	0.25	0.04	0.24	0.03	0.24	0.04	0.24	0.04
LT KSF B	0.90	-0.08	0.64	-0.54	0.84	-0.14	0.84	-0.13	0.83	-0.16	0.90	-0.08
LT 100	0.26	-0.05	0.18	-0.21	0.26	-0.04	0.25	-0.05	0.25	-0.05	0.26	-0.05

[In Evidence 2/2/90]

## COMPANY/BRAND RANKED ON THREE MONTH SHARE

## COMPANY/BRAND RANKED ON THREE MONTH SHARE

## BRAND SHARE ANALYSIS

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989

TOTAL UNITED STATES

	YEAR TO DATE		CURRENT MO.		PREVIOUS MO.		3 MONTH MVG.		6 MONTH MVG.		12 MONTH MVG.	
	DEC.	SHARE	DEC.	SHARE	NOV.	SHARE	DEC.	SHARE	DEC.	SHARE	DEC.	SHARE
	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF
CENTURY	0.55	-0.12	0.35	-0.26	0.57	-0.05	0.50	-0.16	0.55	-0.09	0.55	-0.12
100	0.17	-0.03	0.11	-0.07	0.17	-0.01	0.15	-0.04	0.17	-0.02	0.17	-0.03
KSF	0.05	-0.02	0.03	-0.05	0.06	-0.01	0.05	-0.02	0.05	-0.01	0.05	-0.02
LT KSF	0.06	-0.03	0.04	-0.05	0.07	-0.01	0.06	-0.03	0.06	-0.02	0.06	-0.03
LT 100	0.24	-0.04	0.16	-0.08	0.23	-0.02	0.21	-0.05	0.23	-0.03	0.24	-0.04
LT 100 M	0.03	-0.01	0.02	-0.02	0.03	0.00	0.03	-0.01	0.03	-0.01	0.03	-0.01
MAGNA	0.52	0.40	0.26	0.11	0.46	0.28	0.42	0.23	0.46	0.26	0.52	0.40
FF KSF B (PV)	0.14	0.10	0.06	0.02	0.12	0.06	0.11	0.04	0.12	0.05	0.14	0.10
FF KSF B	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
FF KSF (PV)	0.16	0.12	0.09	0.04	0.15	0.08	0.14	0.07	0.16	0.08	0.16	0.12
FF KSF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
LT KSF B												
(PV)	0.10	0.10	0.04	0.04	0.08	0.08	0.07	0.07	0.08	0.08	0.10	0.10
LT KSF (PV)	0.12	0.09	0.06	0.01	0.11	0.05	0.10	0.04	0.11	0.05	0.12	0.09
LT KSF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
GENERIC (RJR)	0.08	0.05	0.11	0.09	0.13	0.03	0.12	0.07	0.11	0.07	0.08	0.05
FF KSF	0.01	0.01	0.01	0.01	0.02	0.00	0.02	0.01	0.01	0.01	0.01	0.01
FF 100	0.01	0.01	0.02	0.01	0.02	0.01	0.02	0.01	0.02	0.01	0.01	0.01
LT KSF	0.01	0.01	0.01	0.01	0.02	0.00	0.02	0.01	0.01	0.01	0.01	0.01
LT 100	0.01	0.01	0.02	0.02	0.02	0.01	0.02	0.01	0.02	0.01	0.01	0.01
LT KSF M	0.01	0.00	0.01	0.01	0.01	0.00	0.01	0.00	0.01	0.00	0.01	0.00
LT 100 M	0.01	0.01	0.01	0.01	0.02	0.00	0.01	0.01	0.01	0.01	0.01	0.01
ULT KSF	0.00	0.00	0.00	0.00	0.01	0.01	0.01	0.01	0.00	0.00	0.00	0.00
ULT 100	0.01	0.01	0.02	0.01	0.02	0.01	0.02	0.01	0.02	0.01	0.01	0.01

[In Evidence 2/2/90]

COMPANY/BRAND RANKED ON THREE MONTH SHARE

COMPANY/BRAND RANKED ON THREE MONTH SHARE

## BRAND SHARE ANALYSIS

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989

## TOTAL UNITED STATES

[illegible]

[In Evidence 2/2/90]

\* \* \*

COMPANY/BRAND RANKED ON THREE MONTH SHARE

COMPANY/BRAND RANKED ON THREE MONTH SHARE

## BRAND SHARE ANALYSIS

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989

TOTAL UNITED STATES

	YEAR TO DATE		CURRENT MO.		PREVIOUS MO.		3 MONTH MVG.		6 MONTH MVG.		12 MONTH MVG.	
	DEC.	SHARE	DEC.	SHARE	NOV.	SHARE	DEC.	SHARE	DEC.	SHARE	DEC.	SHARE
	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF
GENERIC (BW)	1.14	-0.21	1.38	-0.28	1.04	-0.27	1.17	-0.31	1.14	-0.22	1.14	-0.21
70 NF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KS NF	0.09	0.00	0.12	0.02	0.08	0.00	0.09	0.00	0.09	0.00	0.09	0.00
FF KSF	0.13	-0.02	0.16	-0.02	0.13	-0.01	0.14	-0.02	0.13	-0.01	0.13	-0.02
FF 100	0.13	-0.03	0.17	-0.03	0.13	-0.03	0.14	-0.03	0.14	-0.02	0.13	-0.03
FF KSF M	0.02	0.00	0.02	0.00	0.02	0.00	0.02	0.00	0.02	0.00	0.02	0.00
FF 100 M	0.02	0.00	0.02	0.00	0.02	0.00	0.02	0.00	0.02	0.00	0.02	0.00
LT KSF	0.16	-0.05	0.18	-0.08	0.13	-0.07	0.15	-0.08	0.16	-0.06	0.16	-0.05
LT 100	0.19	-0.05	0.22	-0.08	0.17	-0.07	0.19	-0.08	0.19	-0.06	0.19	-0.05
LT KSF M	0.08	-0.02	0.09	-0.03	0.08	-0.02	0.08	-0.03	0.08	-0.02	0.08	-0.02
LT 100 M	0.12	-0.03	0.14	-0.05	0.11	-0.04	0.12	-0.04	0.12	-0.03	0.12	-0.03
ULT KSF M	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
ULT KSF	0.07	-0.01	0.09	-0.01	0.07	-0.01	0.08	-0.01	0.07	-0.01	0.07	-0.01
ULT 100	0.14	-0.02	0.16	-0.02	0.12	-0.02	0.14	-0.02	0.14	-0.02	0.14	-0.02
ULT 100 M	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
RICHLAND	0.97	0.14	1.33	0.34	1.00	0.17	1.14	0.28	1.04	0.22	0.97	0.14
FF KSF	0.20	0.08	0.28	0.11	0.20	0.05	0.24	0.08	0.22	0.07	0.20	0.08
KSF 250	0.04	-0.04	0.05	-0.02	0.04	-0.01	0.04	-0.02	0.04	-0.02	0.04	-0.04
KSF 225	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
FF 100	0.22	0.09	0.32	0.12	0.23	0.06	0.27	0.10	0.24	0.08	0.22	0.09
100 250	0.05	-0.04	0.07	-0.02	0.05	-0.01	0.06	-0.02	0.06	-0.02	0.05	-0.04
FF KSF M	0.08	0.02	0.11	0.04	0.09	0.02	0.10	0.04	0.09	0.03	0.08	0.02
KSF M 250	0.03	-0.02	0.03	-0.01	0.03	-0.01	0.03	-0.01	0.03	-0.01	0.03	-0.02
FF 100 M	0.08	0.02	0.12	0.04	0.09	0.03	0.10	0.04	0.09	0.03	0.08	0.02
100 M 250	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
LT KSF	0.10	0.02	0.13	0.04	0.10	0.03	0.11	0.04	0.11	0.03	0.10	0.02
LT KSF 250	0.01	-0.01	0.01	-0.01	0.01	-0.01	0.01	-0.01	0.01	-0.01	0.01	-0.01
LT 100	0.13	0.04	0.19	0.06	0.14	0.03	0.16	0.05	0.14	0.04	0.13	0.04
LT 100 250	0.02	-0.02	0.03	-0.02	0.02	-0.01	0.02	-0.01	0.02	-0.01	0.02	-0.02

[In Evidence 2/2/90]

COMPANY/BRAND RANKED ON THREE MONTH SHARE

COMPANY/BRAND RANKED ON THREE MONTH SHARE

## BRAND SHARE ANALYSIS

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989  
TOTAL UNITED STATES

	YEAR TO DATE		CURRENT MO.		PREVIOUS MO.		3 MONTH MVG.		6 MONTH MVG.		12 MONTH MVG.	
	DEC.	SHARE	DEC.	SHARE	NOV.	SHARE	DEC.	SHARE	DEC.	SHARE	DEC.	SHARE
	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF	1989	DIF
RALEIGH	0.65	-0.07	0.93	0.03	0.67	-0.06	0.74	-0.07	0.67	-0.04	0.65	-0.07
KS NF	0.05	-0.01	0.06	0.00	0.05	-0.01	0.05	-0.01	0.05	-0.01	0.05	-0.01
KSF	0.27	-0.03	0.39	0.02	0.28	-0.01	0.31	-0.02	0.28	-0.01	0.27	-0.03
100	0.21	-0.02	0.30	0.02	0.21	-0.02	0.24	-0.02	0.22	-0.01	0.21	-0.02
LT KSF	0.06	0.00	0.08	0.00	0.06	-0.01	0.07	-0.01	0.06	-0.01	0.06	0.00
LT 100	0.06	-0.01	0.09	-0.01	0.07	-0.01	0.07	-0.01	0.06	-0.01	0.06	-0.01
CAPRI	0.57	0.07	0.83	0.17	0.59	0.00	0.72	0.12	0.66	0.10	0.57	0.07
120 B	0.01	0.01	0.01	0.01	0.01	0.01	0.02	0.01	0.01	0.01	0.01	0.01
97 B	0.30	0.04	0.43	0.08	0.31	-0.01	0.37	0.06	0.35	0.05	0.30	0.04
120 M B	0.01	0.01	0.01	0.01	0.01	0.01	0.02	0.01	0.01	0.01	0.01	0.01
97 M B	0.26	0.03	0.37	0.06	0.26	-0.01	0.32	0.04	0.30	0.04	0.26	0.03

COMPANY/BRAND RANKED ON THREE MONTH SHARE

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989

## TOTAL UNITED STATES

[illegible]

[In Evidence 2/2/90]

COMPANY/BRAND RANKED ON THREE MONTH SHARE

COMPANY/BRAND RANKED ON THREE MONTH SHARE

## BRAND SHARE ANALYSIS

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989  
TOTAL UNITED STATES

	YEAR TO DATE DEC. 1989	SHARE DIF	CURRENT MO. DEC. 1989	SHARE DIF	PREVIOUS MO. NOV. 1989	SHARE DIF	3 MONTH MVG. DEC. 1989	SHARE DIF	6 MONTH MVG. DEC. 1989	SHARE DIF	12 MONTH MVG. DEC. 1989	SHARE DIF
TALL	0.03	0.00	0.02	0.00	0.03	0.00	0.03	0.00	0.03	0.00	0.03	0.00
120	0.02	0.00	0.02	0.00	0.02	0.00	0.02	0.00	0.02	0.00	0.02	0.00
120 M	0.01	0.00	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.01	0.00
MISTY	0.00	0.00	0.01	0.01	0.00	0.00	0.01	0.01	0.00	0.00	0.00	0.00
SLIM LT												
100 B PV	0.00	0.00	0.01	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
SLIM LT												
100 M B PV	0.00	0.00	0.01	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
BULL												
DURHAM KSF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
HALF +												
HALF KSF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
ICEBERG 100												
M	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
OTHER												
AMERICAN												
BRANDS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL												
LIGGETT												
AND MYERS	3.25	0.45	3.03	0.51	3.39	0.39	3.33	0.55	3.35	0.64	3.25	0.45

• • •

COMPANY/BRAND RANKED ON THREE MONTH SHARE ANALYSIS

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989  
TOTAL UNITED STATES

[illegible]

[In Evidence 2/2/90]

COMPANY/BRAND RANKED ON THREE MONTH SHARE

COMPANY/BRAND RANKED ON THREE MONTH SHARE

## BRAND SHARE ANALYSIS

SHARE AND CHANGE VERSUS YEAR AGO - DECEMBER, 1989  
TOTAL UNITED STATES

[illegible]

[In Evidence 2/2/90]

Annual Report 1989

Liggett Group Inc.

\* \* \*

### Positioned to Meet the Challenges

*At Liggett, we are known for our strategic innovation. We continue to direct our creative abilities toward product development and customer support. Our sales force is structured to support our customers' desires for tailored, individualized programs and to increase our visibility in the marketplace.*

*Our manufacturing operations are expertly managed in the flexible manner necessary to meet ever-changing market demands and ensure quality and efficiency. Thus, we have the ability to rapidly bring a new product to the marketplace at a competitive price.*

*We made a number of strategic moves to position ourselves to take advantage of the opportunities available in various market niches. We will continue our strategy to maximize the long-term profitability of our full-price, branded products with special emphasis on our Eve brand. We will also continue to have a strong focus on price/value brands.*

*Price/value is a growing portion of the cigarette business and rivalry for market share of the segment is intense. As the prices of price/value cigarettes have been moving closer to those of full-price brands, consumers have been expressing a desire for image-oriented, low-price brands instead of the original black-and-white generic cigarette.*

*Liggett created the low-price cigarette in 1980 when it introduced its generic cigarettes. In fiscal 1989 we introduced*

several new branded price/value products such as Chesterfield Filter Lights and Savvy as well as Pyramid, a new extra low price category. We believe these brands are indicative of Liggett's strategic innovation.

### International Opportunities

The Far East is proving to be a viable expansion market for Liggett's products. Liggett was the first company to introduce

[Photo and Caption deleted in Printing]

\* \* \*

tomers' business objectives and are able to give their accounts the kind of personal service and attention that it takes to promote and sell our products. Hundreds of service merchandisers across the country assure that our support programs are implemented on time and in the most effective manner.

### Products

In 1980 Liggett introduced the generic cigarette which spawned a category that has evolved into the price/value segment. We delivered quality and value in our generic and private label cigarettes and the consumer responded. This market segment, including "branded" price/value, private label and value-added products with 25 or 30 cigarettes for the price of the traditional 20, has become the fastest growing segment of the industry.

According to "The Maxwell Consumer Report," a widely recognized industry trade publication, in 1984 price/value products accounted for approximately 6 percent of industry

sales. That market share grew to 11 percent in 1988 and some project it to reach nearly 17 percent by 1991.

We continue to emphasize branded price/value cigarettes and to work with our private label customers to upgrade their private label brands' images. Many of our customers have responded to more appealing packaging.

As pressure for higher taxation increases and as prices increase, we will continue to position ourselves in this category which offers significant appeal and choice to consumers. We are committed to this segment and it is one of our key areas of focus.

[Photo Deleted in Printing]

\* \* \*

### Management's Discussion and Analysis

#### Results of Operations

This discussion should be read in conjunction with the financial statements of Liggett and notes thereto included elsewhere in this report. Net sales and cost of sales both include federal excise taxes.

Fiscal Year Ended March 31, 1989 vs. Fiscal Year Ended March 31, 1988. Net sales were \$500,969,000 for the fiscal year ended March 31, 1989, compared to net sales of \$531,891,000 for the same period one year earlier. The decrease in net sales was due primarily to a 16% decline in unit sales volume of cigarettes partially offset by an 11.4% increase in selling prices. The decrease in cigarette unit sales volume was comprised of a 14% decline in full-price, branded cigarette volume and a 17% decline in price/value cigarette volume. The decline in volume of

Liggett's full-price, branded cigarettes was higher than the decline rate of these brands in recent years, and was attributable to market pressures. Liggett's management anticipates that the volume of the Company's mature full-price brands (Chesterfield, Lark and L&M) will continue to decline. The decline in volume of the price/value cigarettes was due primarily to the accelerated decline in market share of the Company's black & white generic brands. This reflects growing consumer preference for branded products sold at generic prices, as generic prices have increased relative to full-price brands. Liggett's management believes that this trend will continue. The Company's ability to compete effectively in the price/value segment will be heavily dependent upon its success in protecting the distribution of its private label brands and introducing new branded price/value products. In addition, the Company must aggressively pursue its diversification strategy to offset the potential decline in revenue from a continued loss of market share in its cigarette operations. Effective January 1, 1989, Liggett began marketing Fazer confectionery products in accordance with an exclusive licensing agreement with Oy Karl Fazer Ab, a Finland-based confectionery producer. For the three months ended March 31, 1989, net sales for these products amounted to \$1,492,000.

Gross profit as a percent of net sales (excluding federal excise taxes) increased to 66.7% for the fiscal year ended March 31, 1989 from 63.0% for the same period one year earlier. This increase was a result primarily of higher selling prices and improved manufacturing efficiencies that more than offset the loss in sales volume and inflationary cost increases. Selling, general and administrative

expenses increased to 53.8% of net sales (excluding federal excise taxes) for the fiscal year ended March 31, 1989, compared to 48.0% for the same period one year earlier. This increase was primarily due to increased marketing expenses in response to competitor marketing activities, partially offset by a reduction in legal fees. At March 31, 1989, the product liability caseload was the lowest it has been in over three years. This reflects the overall industry situation with fewer cases being filed and many being dismissed or dropped.

Net interest expense was \$396,000 for the fiscal year ended March 31, 1989 compared to \$6,191,000 for the same period one year earlier. This decrease was largely attributable to a reduction of the acquisition indebtedness during the fiscal year ended March 31, 1988 and increased interest income on investments during the current year.

Net income decreased 1.5% to \$30,240,000 for the fiscal year ended March 31, 1989, from \$30,688,000 last year as a result of the decline in cigarette unit sales volume and higher selling, general and admin-

[Chart Omitted in Printing]

---

## [Excerpt Of The Trial Proceedings: Court]

\* \* \*

[p. 1-145] element under Section 2(a) of the – pardon me – I’ve heard Mr. London so much, I keep thinking it’s a Sherman Act case – the Robinson-Patman Act, injury to competition is required as a part of Section 2(a) violation. Plaintiff has maintained from day one, right to the day and right to the end of trial, that the injury to competition will be injury to competition in the cigarette market in the United States. That is where the injury to competition took place, and it’s where the injury to competition was held. That has been plaintiff’s consistent position. Now ---

THE COURT: Everybody agrees, right?

MR. HOGELAND: We were in agreement that that’s where the competitive injury took place. We’ve always said that, they know we’ve always said that, and we are talking about price discrimination. Price discrimination is with respect to generic cigarettes; pricing below cost has been with respect to generic cigarettes. The pricing discrimination, the pricing below cost, is with respect to generic cigarettes. That is a part of a Robinson-Patman violation. Robinson-Patman doesn’t require a relevant market, but competitive injury must take place somewhere, and it takes place in this overall national cigarette market. We have never disagreed with that. Our experts have always said that, and they know it, and we never changed it.

THE COURT: Mr. London, are we in agreement then?

[p. 1-146] MR. LONDON: Well, I think I’m in agreement with what Mr. Hogeland said in the last four minutes. I think I am not the only person in the room that is struggling to reconcile the most recent statement with his next previous statement, which I understood to be almost directly to the contrary when he said, “The relevant market is generic cigarettes.” Now he can’t, Your Honor ---

THE COURT: Okay. Well, I understood it that way, too. So let’s see if we are in agreement, and not talk about who said something 30 minutes being in disagreement – 30 minutes ago.

What I understand Mr. Hogeland is saying is what my limited understanding of the case is about, and what I understood Mr. London to be saying he thought the case was about. Now it did seem, Mr. Hogeland, somewhat different from what Mr. Foster started off saying and that you started off saying. You are contending that you can make out a violation of Robinson-Patman, and have never contended otherwise, that there was any discriminatory pricing in anything but the generic cigarette market. Of course, the intent of it there from Liggett’s theory is for Brown to protect it’s ultra-high profits in the branded market, and that’s ---

MR. HOGELAND: Correct.

THE COURT: And that’s what I’ve understood the [p. 1-147] case, and that’s why we didn’t buy Mr. Michael Robinson’s argument, although well put several weeks ago, on the Cadillacs and cigarettes being sold out of the same – by the same company, or something. We’re talking about cigarettes generally. Now with the lessening

of competition, I understand you to say that Liggett contends there is a lessening of competition in the domestic cigarette market, whether branded or generic, excluding marijuana cigarettes, I assume.

MR. HOGELAND: Yes, sir.

THE COURT: Is that – is everybody happy?

MR. LONDON: Well, I understood Your Honor – I understood Your Honor's question, and I understood Mr. Hogeland's response, and I think certain things flow from that which we don't have to address at this late hour today. We should go on with the trial of the case. Mr. Hogeland's words will be brought back to Your Honor's attention on a number of occasions as the trial moves on.

Thank you, sir.

THE COURT: All right. Well, isn't that what he's been saying all along?

MR. HOGELAND: Yes, indeed, it is.

THE COURT: I know you contend, apparently, and have throughout, before the Magistrate and me, and maybe ultimately correctly, for all I know, that – that's no [p. 1-148] Robinson-Patman violation if you sell at different prices for generics to protect branded is not a violation. But we've crossed that bridge, unless in the next 90 days ---

MR. HOGELAND: Your Honor, before he quotes my language back to me, there is no change in our position, ever, that the injury to competition takes place in the cigarette market. We talk about discrimination, and

we have consistently talked about discrimination as being in the generic market. We talk about predatory pricing and pricing below cost in the generic business, Your Honor, and let me just make sure, before Mr. London quotes it back to me, that there's no more misunderstanding, if there ever was one. Brown and Williamson's expert's report that they filed talked about studying the price/cost relationship, and they say, "We intend to study price and cost data to ascertain whether, and by how much, Brown and Williamson's net prices of generic cigarettes exceeded the average variable cost of producing them." That has been always our position, too, Your Honor, and that is the issue in this case. When we talk about discrimination and below cost pricing, there we are talking about generic cigarettes. We are talking about an injury to competition that happened in the cigarette market, and that has been consistently our position and it will be our position until the end of trial, Your Honor.

MR. LONDON: If Your Honor please, I heard

\* \* \*

[p. 1-151] or so, this is basically what I thought both sides had been doing and trying here for months and years. I don't know what's different, except for the fact both of you still believe in your position.

MR. HOGELAND: There's no difference, Your Honor, except that Mr. London just said – made reference to our claiming some sort of injury in some fragment of the cigarette market. We don't claim that. We never have claimed that. We're claiming injury in the cigarette market, not in some fragment of it. We claim predation and discrimination with respect to generic cigarettes, injury in

the cigarette market, not a fragment of it in the cigarette market, cigarette business, competition in cigarettes has been injured. It's always been our position and will remain our position.

MR. NORWOOD ROBINSON: Judge, let me say one thing. I brought this up, and I want to tell you how it came about, sir.

THE COURT: Mr. Robinson, I'm not keeping a score up here ---

MR. NORWOOD ROBINSON: I know you're not. I know you're not, sir.

THE COURT: --- of black marks or gold stars about who brings up dumb things. I'm sure I'll bring up dumb things before it's over, too. But ---

\* \* \*

---

[Excerpt Of The Trial Testimony Of K.v.R. Dey]

\* \* \*

[p. 2-127] the price of cigarettes which are sold by the thousands, and also the terms of the sale.

Q What do you mean by terms of the sale?

A Well, if you buy cigarettes and you pay promptly, you get a cash discount. In cigarettes it's three and a quarter percent, 10, 12, 14 days, depending on the particular manufacturer that you are doing business with. In the normal grocery business it's two percent, 10 days.

Q Can you explain to me how that works?

A Well, if you get a shipment of cigarettes and you pay within the 12 day period, you get two percent off, which you take off the bill when you pay it. You get a two percent cash discount as if - like you buy something for cash in some of the stores that you do business, you can get something off for cash.

Q And the terms that you refer to are a part of each manufacturer's price list. Is that correct?

A Yes, sir, it is.

Q What else appears on the manufacturer's price list?

A Well, a list of all the cigarettes that each manufacturer sells, the length or size and the price, and any other information that that particular manufacturer wants to put on there.

Q In 1976 when you went to Liggett and Myers, did the list price for cigarettes vary by manufacturer or by brand?

[p. 2-128] A No. The list price was the same for all lengths of cigarettes. In other words, the 85 or king size cigarette and there's the 100 mm cigarette and they were all priced the same. All the 85's are priced the same and all the 100 mm's were priced the same.

Q What's the difference between the 85 mm and the 100 mm?

A Oh, it's just, what - 15 mm length. One is longer than the other.

MR. HOGELAND: May I approach the witness, Your Honor?

THE COURT: Yes, sir. Any time you want to hand him any documents or exhibits you may do so without asking the Court.

BY MR. HOGELAND:

Q Now, Mr. Dey, I show you what's been marked as Defendant's Exhibit 10,468 and ask if you can tell me what it is?

THE COURT: Is this Plaintiff's Exhibit?

MR. HOGELAND: No, this is a Defendant's Exhibit Number, Your Honor.

THE COURT: Okay.

A This is a 100 mm cigarette, Barclay's brand.

MR. HOGELAND: I offer that into evidence, Your Honor.

THE COURT: All right, gentlemen. We've talked about pre-marking these exhibits. If this is now going to be

\* \* \*

[p. 2-133] THE WITNESS: Brown and Williamson makes the Barclay and Philip Morris makes the Merit.

THE COURT: All right.

BY MR. HOGELAND:

Q Now, Mr. Dey, you testified that the list price for cigarettes was the same for those of the same length. Is it your testimony that the 100mm Barclay and the 100mm Merit had the same list price.

A Yes, sir.

Q And is it your testimony that the king size or 85mm Barclay and the king size or 85mm Merit had the same list price? Is that correct?

A Yes.

Q Can you tell me again, what is the list price?

A The list price is the published price put out by the manufacturers to all direct line accounts.

Q In 1980, Mr. Dey, what was the price of other brands of 100mm cigarettes - as compared with the price of 100mm Barclay and the 100mm Merit?

MR. NORWOOD ROBINSON: Your honor, I object to this. I understand he means list price, which is what he's been asking.

THE COURT: That's what I understand the list price is. Overruled.

A You're asking the list price? How they compared with [p. 2-134] them?

BY MR. HOGELAND:

Q I would like to know what the list price was of other 100mm cigarettes was as compared with the list price of the Barclay 100 and the Merit 100, which you have identified.

A All 100's were priced the same and all 85's were priced the same in the industry.

Q And was that true prior to 1980 also?

A Yes, it was.

Q Since 1976, Mr. Dey, when you joined Liggett and Myers, has the manufacturers' list prices for cigarettes stayed the same?

A No, they have not. They've gone up the average of once a year and most recently, for the past, I would say for the last 8 to 10 years, about twice a year.

Q At Liggett and Myers how do you decide when to increase your list price?

A Well, when we make our particular plan for the year based on the assumptions that we put into that plan, we estimate when we think the industry will go up in price and we plan accordingly to that plan.

Q Does the industry go up in price all at once?

A Usually one of the larger shares, about two or three people, one of them goes up and then within about

two weeks maximum period, the others have all followed.

[p. 2-135] Q Do they always all go up the same amount?

A Generally speaking, yes. That's historically true. They all go up the same amount so there is no advantage.

Q How many cigarette manufacturers are there in the United States?

A Six major manufacturers.

Q What are they? Can you name them for us?

A Philip Morris, who has approximately today, about 40 share of market. R. J. Reynolds - RJR Nabisco, whatever it is called today, is about a 31 - 30 to 31 share ---

Q Let me interrupt you. Explain what you mean by share of market.

A Well, let's take the whole market is 100%. Forty share would be 40% of the market. We use share in place of percents in this case. Brown and Williamson would be about 11% share - 11 share. Then comes American Tobacco and Lorillard ---

MR. NORWOOD ROBINSON: Your Honor, may I inquire if he's talking about now?

THE WITNESS: Yes, sir.

A The American and Lorillard are 7 or 8 share apiece. We're about a 3 share.

Q What are Philip Morris' principal brands, Mr. Dye [sic]?

A Marlboro, Merit, Benson & Hedges, Cambridge are some of them.

\* \* \*

[p. 2-146] stronger effort initially for pack sales rather than carton sales?

A On branded items, yes, we do try to make sure that you get some pack trials so that people can try the cigarette to find out whether they like it or not, and then you try to have them eventually buy a carton. But in order to have somebody switch, because not a lot of people switch in smoking cigarettes historically. So, in order to get them to switch you have to have them probably try the cigarette maybe three times before they might accept a carton. So pack sales are initially important.

Q Was Eagle a cheaper cigarette to manufacture than other brands of cigarettes made by Liggett and Myers?

A No, it was not.

Q Did Liggett and Myers price Eagles so as to make a profit for Liggett and Myers?

A Yes, we did.

Q Was Eagle the same quality cigarette as Liggett and Myers brand of cigarette?

A Yes, it was. Same tobacco.

Q How did Liggett and Myers expect to make a profit selling the same quality cigarette at a lower price?

A Well, the profit in cigarettes or the margin in cigarettes, if you want to call it that, were very sufficient in order to take 50¢ a carton off the price and still be able to market [p. 2-147] it and still make money.

Q You have 50¢ off a price. You found through the Eagle experience was not enough to create a successful new price point? Is that correct?

A Yes, sir. That's correct.

Q At that time in the late '70's, what were the cigarette industry's profits as compared to other businesses you had worked in?

A Well, the profits in the cigarette industry are the best of any industry I've been associated with, very much so.

Q Is that also true today?

A Yes, it is.

Q Are the profits of cigarette manufacturers higher today than they were when you came to the industry?

A Yes, they are.

Q When you took over in 1976, was Liggett and Myers making a profit?

A Yes, we were making a profit. In 1977 when I came in we were making a profit but not a satisfactory one.

Q What was unsatisfactory about it?

A Well, our company at that time, we'd had considerable declines in our business and we had not adjusted

our company to the size business we were, if you will. We had excess assets that we were not using in the day to day operation of

\* \* \*

[p. 2-158] A well, when you look at generic products and the pricing – where we looked at the whole generic category, of course, generic products were priced lower than the private label for the chain. The chain had a private label – Ann Page is an example I used before, and generics were priced below that. It was felt that generic, to be successful, should be about 30% less than branded prices, whereas private label ordinarily about 20% less. In order to make generic successful, they felt you had to have a 30% less differential – price differential at retail. We started out not quite at 30% but we eventually got there.

Q Do I understand your testimony? You and TopCo decided and agreed to a larger differential for generic cigarettes than was the practice for other generic products?

MR. NORWOOD ROBINSON: Object to the leading.

THE COURT: Sustained.

BY MR. HOGELAND:

Q What was the differential for other generic products?

A Well, all generic products had to be about 30% less. We just fit into that.

It wasn't always accomplished.

Q What happened as a result of your selling generic cigarettes to Jewel?

A To TopCo?

Q To TopCo.

\* \* \*

[p. 3-174] A Are you talking about the consumer?

Q I'm asking you what you have previously testified to under oath, sir, and the question – one more time – is whether or not you have testified that, and I quote, "The public has not been denied the benefits of free and open competition in the cigarette industry."

A As I define the word competition, that's correct.

Q Is that what you testified to?

A That's my statement, sir.

Q And have you testified under oath, sir, that there is competition among tobacco manufacturers in branded cigarettes?

A Among manufacturers there is competition as I define it.

Q And did you testify, sir, that it was competition – did you characterize it – this competition – as being intense?

A As I defined competition in getting our products to the retailer and selling it, yes, it is intense.

Q Well, sir, in all of this experience and training and college education and courses you've had, you understand what competition is, don't you?

A I would hope so.

Q Well, you allege, don't you, sir, that my client has injured competition [sic]? That's the basis of your lawsuit, isn't it?

A You've injured competition. I'm competition.

[p. 3-175] Q Yes, sir, but your allegation was – in the complaint, wasn't it, and your testimony is that my client has not – has injured competition. Not a competitor, but injured competition. Isn't that your contention?

MR. HOGELAND: Objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: As I define competition, yes.

BY MR. NORWOOD ROBINSON:

Q Well, what is it that you say that my client has done? What is it he's done in damaging competition?

A The client gave rebates that went to the middle man. I mean Brown and Williamson – excuse me – gave rebates that went to the middle man that were not reflected at retail. Did not give the consumer the benefits of a better bargain. Did not increase the differentials. They went out to control the market. Displace us. They went out to discriminate, to cause people to look to see that they have to buy exclusively from Brown and Williamson to get the best rebate. Put pressures against us. Caused us pain while it didn't cost them as much to do it. The results did not get to the consumer in lower prices and better bargains. And that's why.

Q Have you ever done any of those things at Liggett that you've just talked about?

A Our business is aimed at expanding the category.

\* \* \*

[p. 3-179] the same price that all other manufacturers charged, you said, was a fair and reasonable price for the product.

A As the industry set the standard, yes, sir.

MR. NORWOOD ROBINSON: Your Honor, I object to that answer. If I could get a yes or no. He qualifies it every time I ask it. May I ask it again, sir?

THE COURT: Yes, sir.

BY MR. NORWOOD ROBINSON:

Q I want to know – yes or no – sir, whether or not you say that the price you charged for branded cigarettes, which is the same price you say everybody else charged, was a fair and equitable price for that product to the American consumer.

A It's what the industry set, and based on that it's a fair price.

Q Sir, can you answer my question yes or no?

A I think I've answered it, sir.

THE COURT: Well, I think the question is, is it a fair price or is everybody in the industry charging an unfair price?

BY MR. NORWOOD ROBINSON:

Q Can you answer that question, sir?

A Based on that, yes.

Q Based on what?

A What the judge just said.

THE COURT: So the answer is yes, that it is a fair [p. 3-180] price. Is that right?

THE WITNESS: Yes, sir.

THE COURT: All right, sir. Let's move on.

BY MR. NORWOOD ROBINSON:

Q Have you testified under oath, sir, that Liggett does not share any kind of monopoly power with any other tobacco company?

A Well, we certainly don't share any monopoly power, no.

Q And have you also testified that, to your knowledge, no two companies have ever conspired in any matter to form a monopoly as far as the tobacco company is concerned - industry is concerned?

A There's no monopoly. No, sir.

Q And have you testified, also, sir, that the cigarette industry is not a collusive oligopoly?

MR. HOGELAND: Objection.

THE COURT: Overruled.

THE WITNESS: What do you define as an oligopoly?

BY MR. NORWOOD ROBINSON

Q Whatever it was you meant when you testified under oath that there was no collusive oligopoly, sir.

MR. HOGELAND: Objection, Your Honor, the question was not defined when given to him before, and it was objected to as to the form. I renew my objection. These are not words Mr. Dey used in any testimony.

[p. 3-181] THE COURT: I renew my same ruling. Overruled. You may explain your answer if you need to.

THE WITNESS: Ask it again, please.

THE COURT: Did you testify --- Well, you were asking him if he testified to that is the question?

MR. NORWOOD ROBINSON: Yes.

BY MR. NORWOOD ROBINSON:

Q I want to know, sir, if you testified under oath that the cigarette industry is not a collusive oligopoly?

A That is correct.

Q Now, was it the truth?

A To the best of my knowledge, yes, sir.

Q And did you say, sir, under oath, that the price of branded cigarettes is a combination of elements including cost of goods, competitive environment and taxation?

A The price of cigarettes based on the cost of manufacturing, the cost of marketing, the taxation, they all go into the price, yes.

Q And so it's nothing but a fair price, right, sir?

A I don't really understand what you're driving at. I'm sorry, sir. What's a fair price or an unfair price? Based on the way you word it, yes, it's a fair price.

Q Sir, I want to show you a document that I have just three or four copies of.

MR. NORWOOD ROBINSON: I'm sorry I don't have

\* \* \*

[p. 8-28] Q I want to know if you were aware of the fact - if you knew that your brokers were sending out information that Brown and Williamson's product could not be shipped because of this lawsuit, and that their product was of questionable quality?

A No, sir, I was not aware of that.

Q Sir, you sent almost monthly a written report, did you not, to Mr. J. W. Old, Junior, who was the president and chief executive officer of Grand Met U.S.A., Inc.?

A There were --- I sent two letters a year, one on the plan, one on the long-range plan, and then for a period of time I sent him some monthly status reports on the activity in the marketplace. I believe that's the other report that I sent. Other than that, I didn't send him anything.

Q Do you remember, sir, on July the 25th, 1984, that you wrote a letter to Mr. Old which said that "The incentive dollar battle now being waged in the generic category will likely preclude any further competition in the generic packaging area"?

A I don't remember that letter, sir. I don't remember that particular paragraph. I don't have it in front of me. That's five years ago.

Q I'll ask you, sir, if you remember writing a letter to Mr. Old that said that "The price segmentation, that is, the value added, and upscale packaging has resulted in an [p. 8-29] extremely volatile marketplace that should offer new brand positioning opportunities over the next few years"?

A Sounds like something that would be in that letter.

Q And do you remember telling him, sir, that the competition had substantially increased in the total cigarette market?

A That sounds like something I would write, yes, sir.

Q Well, was it true?

A Yes, sir. As I have defined "competition," competition has increased. Proliferation of items, the new price point positioning, the higher price for shelving costs, the shifting of advertising dollars as an industry from media to in-store promotional activity greatly increased the competitiveness from our standpoint as a manufacturer to get our products to the store on the shelves so they could be exposed to smokers and have the opportunity to buy our product.

Q Well, sir, is competition, as you define it, good for the American consumer? Is that the kind of competition you're talking about?

A Good, healthy competition in our capitalistic system ---

Q Could you answer my question "yes" or "no," and then you may explain it any way you want to. And it's simply this, sir. I'll repeat it to you. Do you say that competition, as you defined it - I think you've used that term several times.

\* \* \*

---

**[Excerpt Of The Trial Testimony Of H. Grant]**

[p. 10-43] so that we acknowledged a significant unknown."

Q "Mr. Parrack, what was the rationale for the five volume breaks?"

A "To the point of minimizing diversion of B and W resources, particularly sales resources. We felt that if feasible, it would be greatly to our advantage to get our volume target from the fewest possible customers that would minimize the number of sales calls, the number of distribution points, the number of shipping instructions, and would make the launch of generics relatively more efficient, particularly from a time management standpoint."

Q "Did anyone at either of the meetings challenge that principle?"

A "It was questioned whether it was feasible. It was not questioned whether it was desirable."

Q "And did that discussion lead to a discussion of the allocation of available margins?"

A "Yes, it did."

Q "What was the rationale that you expressed for the allocation of available margin?"

A "Put the money where the volume is."

Q "Can you explain that for me?"

A "Yes. The margin structure outlined by the volume breaks allocates total discounts, with the greatest total discount going to the highest volume potential

accounts, those in the [p. 10-44] 25,000-case bracket, and then slide the discount rate down to Level 5, which is the smallest volume break account."

Q "And did anyone challenge that principle?"

A "No."

Q "What were the implications of the timetables that were discussed at these meetings?"

A "These were two principle implications. One was, if we wished to enter the generic segment by June of '84, we had to go through all the preliminary steps of readying the total offer in that time frame, so that approval to proceed was needed; otherwise, the start date would slide back during the year.

"The second discussion was specific feasibility and elements of each of those steps required to get home by June."

Q "Did anyone challenge the feasibility of the time allotted to each of those steps, at either meeting?"

A "Not that I recall."

Q "What conclusion was reached at either of the meetings?"

A "Both meetings responded favorably to the proposal to enter the generic segment, conditional to details being developed; in particular, further discussion of potential competitive response, especially Philip Morris and R. J. Reynolds."

Q "Can you tell me what the discussion at the two meetings

\* \* \*

[p. 11-70] Brown and Williamson to GPC?

MR. MICHAEL ROBINSON: Objection.

THE COURT: Well, is the agreement in evidence?

MR. PECK: Not yet, Your Honor.

THE COURT: Sustained.

MR. FOSTER: All right. We'll offer it, and I'll go on to something else. And then we'll come back and offer it, Your Honor.

BY MR. FOSTER:

Q Prior to --- Going on to another subject for the time being, Mr. Grant, prior to the time that Liggett introduced generics in 1980, had there been any list price competition among the cigarette manufacturers?

A No, sir. There had not.

Q Were all king size - that is 85 millimeter cigarettes - sold at the same price?

A Yes, they were.

Q And how about all 100 millimeter cigarettes?

A And all the longs were sold at the same price too.

Q Prior to the time that Liggett introduced generics in 1980, what had been happening to the prices of branded cigarettes?

A They had been going up on a fairly consistent basis. And in the early '80s they started to go up twice a year.

Q How did price increases occur?

\* \* \*

[p. 11-73] knowledge, he may testify.

BY MR. FOSTER:

Q All right. What's the basis of your knowledge as to how retailers sold -- the price at which retailers sold cigarettes?

A Well, you know, the list prices that the manufacturers put to the wholesaler were usually the list prices they were charged to the retailers.

Q Well, how do you know that?

A Well, you know, by going out. And, you know, we get reports in on what the retail prices are, what consumers are paying for products.

Q As a regular part of Liggett and Myers' business, do you monitor the retail price of cigarettes?

A Yes, we do.

Q Have you consistently monitored the retail price of cigarettes as long as you've been at Liggett and Myers?

A Yes, we have.

Q How long have you been at Liggett and Myers?

A Eighteen years.

Q All right, sir. Now I'll ask the question again. Do retailers, prior to your introduction of generic cigarettes in 1980, did retailers sell all 85 millimeter cigarettes at the same price?

A Yes.

\* \* \*

[p. 11-109] Q How do you then, from a marketing point of view --- Has this decline in generic products, other than cigarettes, been reflected in a decline in the price value share of cigarettes?

A No, sir. It has not.

Q Why not, if you know from your marketing experience?

MR. NORWOOD ROBINSON: Objection.

THE COURT: All right. Are you talking about a decline in the price value share of cigarettes?

MR. FOSTER: Yes, sir.

THE COURT: It is not ---

MR. FOSTER: It's not declining. Price value cigarettes have grown in contrast to other generic products. And I'm asking him if, in his marketing experience ---

THE COURT: All right. He is a marketing man of cigarettes. He can testify as to why he thinks the category has grown. Overruled.

BY MR. FOSTER:

Q Okay. Go ahead, sir.

A Yes, sir. I can. You know, basically in the cigarette business through the states continually raising the tax on cigarettes, plus the industry taking two price increases a year, the absolute level of cigarettes have continued to rise very dramatically, and ---

Q Is that different from the market in other generic [p. 11-110] products?

MR. NORWOOD ROBINSON: Objection.

THE COURT: Well, to the extent of your knowledge as to whether the other generics take two price raises a year and have an increased tax, you may testify.

A No, sir. The other industries, I know, do not have state taxes on them, the majority of them.

Q Do they have two price increases a year?

A No, sir.

THE COURT: Did you say that the price of manufacturing cigarettes has not gone up since 1984; is that right?

MR. FOSTER: The cost, yes, sir.

THE COURT: The cost of manufacturing hasn't gone up since '84?

THE WITNESS: Yes, sir.

THE COURT: No salary raises for the workers since '84?

MR. FOSTER: While we're on that subject, why don't you explain to the Court and jury what is the basis for your statement that the cost of manufacturing cigarettes has not gone up since 1984.

THE WITNESS: Yes, sir. The cost of tobacco primarily has not gone up. There have been some minor, you know, increases on paper and filter, but they've been offset [p. 11-111] by, you know, the improvement of the

productivity through manufacturing, you know, faster equipment, et cetera.

THE COURT: I just thought maybe federal judges were working in the plant. So I wanted to find out, Mr. Foster.

MR. FOSTER: You need a union, Your Honor.

THE COURT: When he talked about no increases, I just wanted to check it out. That's all right. Go ahead. All right, sir.

BY MR. FOSTER:

Q I believe we've located some documents I wanted to ask Mr. Grant about earlier.

I'm going to show you Defendant's Exhibits 846 and 898 which Mr. Robinson showed to Mr. Dey during Mr. Dey's cross examination. Do these documents relate to relationships between Liggett and Myers and a chain called Super Value?

A Yes, sir. They do.

Q Who or what is Super Value?

A Super Value is a large grocery wholesaler.

Q Where are they located?

A Their corporate headquarters are located in Minneapolis.

Q Where, sir?

A Minneapolis, Minnesota.

Q All right, sir. Now who is Mr. Ray Rozar?

A He's an account manager for Liggett and Myers.

\* \* \*

[Excerpt Of The Trial Testimony Of C. Eads]

\* \* \*

[p. 22-166] and be sworn, please.

CLARENCE EADS, PLAINTIFF'S WITNESS, SWORN

MR. RASMUSSEN: Good afternoon, Your Honor. Good afternoon, ladies and gentlemen of the jury. I'm Garret Rasmussen, and I will be questioning Mr. Eads from the podium, simply because I'm more comfortable using a podium.

DIRECT EXAMINATION

BY MR. RASMUSSEN:

Q Please state your name.

A Clarence Eads.

Q Do you go by the nickname, Skip?

A Yes, sir, I do.

Q Where do you live?

A Metairie, Louisiana.

Q Are you married?

A Yes, sir, I am.

Q Is your wife here today, Mr. Eads?

A Yes, sir, she is.

Q Who do you work for?

A The Imperial Trading Company in Metairie.

Q What kind of company is that?

A The Imperial Trading Company is a wholesale candy and tobacco distributor.

Q I want to show you an exhibit.

MR. LONDON: Your Honor, may I request that the

\* \* \*

[p. 22-170] products when you worked there?

A Between 80 and 85 percent.

Q And what were the annual sales of tobacco products by Eli Witt in the years that you were there?

A 1984 the total sales were roughly \$575,000,000.

Q Between 1978 and 1985, when you worked at Eli Witt, where was Eli Witt headquartered?

A In Tampa, Florida.

Q Is that where your office was?

A Yes, sir.

Q How many people did Eli Witt employ at that time?

A Between 1100 and 1200 employees.

Q And what was your job?

A My position was vice president of sales and operations of the company.

Q In that job, who did you report to?

A The president of the company.

Q Now you said that Eli Witt was headquartered in Tampa, Florida. Did it have locations outside of Florida?

A Yes, sir. We had 27 distribution houses throughout the southeast part of the United States.

Q Can you tell the judge and the jurors what responsibilities, if any, you had at Eli Witt in the period between 1978 and 1985, the period when Liggett came out with generics and then B&W came out with generics, what

\* \* \*

[p. 22-185] A None that I can recall.

Q From the period between 1980 and 1984, what was the length of a typical new brand introduction rebate offer from a manufacturer to a distributor?

A On a new brand introduction, four to six weeks.

Q In your 18 years of experience as a distributor, what was the longest introductory rebate that you remember being paid from a manufacturer to a distributor?

A I don't recall any being more than six weeks.

Q Now, Mr. Eads, we've been talking about rebates. Let's go back to the franchise program that we were discussing earlier, which is the ten-cent or thirteen-cent program. Did you consider that to be a rebate?

A Not in the sense that we didn't have to earn it. We had to expend money to build the line, and those expenses came out of that 13 cents. And after the brand

was successful, a portion of that, yes, would have been profit for the company.

Q How do you, as a distributor, define "rebate"?

A Basically, a rebate is something that is offered merely for buying product and inventorying it, and having it available for sale, not necessarily having any work requirement or performance requirement to it.

Q Did you have to work for the ten cents or thirteen cents you got from Liggett under the franchise program?

A Yes, sir.

\* \* \*

[p. 23-26] THE COURT: Sustained to what they could have achieved.

BY MR. RASMUSSEN:

Q Let me come about it a different way, Mr. Eads. How many branches does Eli Witt have?

A They had 27 branches at that time.

Q Was any one of those branches alone doing 1,500 cases per quarter of generic business with Liggett?

A No, sir, they were not.

Q Were any of those branches bigger than your competitors, standing alone? In other words, was one of your branches bigger than any of your competitors?

A Our branch operations were equal to, if not greater than most distributors in each of the areas that we serviced.

Q You say none of your branches were doing 1,500 cases per quarter?

A No, sir.

Q Prior to B and W's entry, had anyone -- had any cigarette manufacturer offered a rebate conditioned on purchasing 1,500 cases per quarter of cigarettes in one calendar quarter?

A I can't think of any. I'm not aware of any at this time.

Q In your opinion, Mr. Eads, did this volume requirement favor large distributors?

MR. LONDON: Objection.

THE COURT: Sustained.

[p. 23-27] BY MR. RASMUSSEN:

Q Could a distributor that did not have 1,500 cases per quarter of generic cigarettes have qualified for the 30-cent B and W rebate that was offered to you?

A It would be very, very difficult to do it.

Q Did Mr. Voorhees --- Was this meeting in Tampa?

A Yes.

Q At this meeting in Tampa, did he mention anything about whether the B and W rebates were to be passed on down the chain of distribution to the retailer and ultimately to the consumer?

A No, sir. In the presentation, it was continuously stressed that these rebates would be additional profits for

the company. And as a matter of fact, because they were going to have their sales force working the brand, we asked them how the rebates were not going to be passed on to the retailers, because their sales force would be making deals and offering allowances. And he said that the sales force would not know about the rebate or the amount of it.

Q Did he mention any consumer promotions to the consumer to be associated with this new brand introduction?

A No, sir, not that I know of, not that I remember.

Q In a usual new brand introduction at a wholesaler, is there discussion of consumer promotions?

A Yes, sir, the manufacturers on new brand introductions --- [p. 23-28] As I said earlier, the manufacturer has always been responsible for the promotion, the marketing, the merchandising of the product at the retail level.

Q Now other than achieving the 1,500 volume level with B and W, did Mr. Voorhees say there was anything else that Eli Witt would have to do in order to get that 30-cent per carton rebate?

A No, sir. The only thing that we had to do was to buy the product from them, have it available for distribution. There was no additional requirement whatsoever.

Q You say that you would use your 30 cents to buy carton racks like this (indicating)?

A No, sir. They would supply all of the racks and the point of sale advertising that would go on it.

MR. RASMUSSEN: Your Honor, this is Plaintiff's Exhibit 2377.

BY MR. RASMUSSEN:

Q Did Mr. Voorhees say anything about Liggett's ability to respond to B and W's rebate offer?

A Yes, sir. He was asked what he thought Liggett and Myers would do, would they respond to the 30-cent rebate. His reply was, "We doubt very much that Liggett can respond and match the offer and stay in business." That's the way it was left.

Q And what did you understand that to mean?

[p. 23-29] A That they didn't expect Liggett and Myers to respond to it, and that their offer would be sufficient to take over the black and white segment of the market.

Q Had any cigarette manufacturer ever said anything like that to you before at an introductory new brand meeting?

A No, sir. Not only cigarette manufacturers; no one that's ever met with me has ever said anything like that before.

Q Did Mr. Voorhees ever mention any marketing plans for his B and W Filter Light cigarette?

A No, sir. The only thing that he said they would do is their salesmen would work along with our salesmen to sell the brand.

Q How long was the B and W --- Start again. How long was the B and W rebate offer for?

A I believe it was one year, at the time they introduced it.

Q Did you, Mr. Eads, consider that one-year rebate offer to be an introductory offer?

A I don't know that we considered it as an introductory offer. I don't believe it was discussed in that manner.

Q How long are introductory offers in the cigarette industry with respect to offers from a manufacturer to a distributor?

A Introductory offers normally will last four to six weeks.

Q Let me put up Plaintiff's Exhibit 7025. The introductory

\* \* \*

[p. 23-32] product at a generic price.

BY MR. RASMUSSEN:

Q As so called "branded generics"?

A Yes.

Q Now you told me and us that it took you and Liggett together about two and a half years to get this Filter Lights package going up to the 1,500 volume level?

A Yes, sir.

Q When did Mr. Voorhees want a response about his 30-cent offer to you for 1,500 cases a quarter of B and W Filter Lights?

A Well, they asked for a response that day. They wanted an answer at that time, but we told them that

there was something that we had to take into consideration, and that we would give them an answer within a week or so.

Q And then do you remember anything else about the meeting with Mr. Voorhees and Mr. Bolding in your office in Tampa in early June?

A I don't recall anything else right now.

Q Now after Mr. Voorhees and Mr. Bolding left, did you - what did you do next?

A Mr. Burnstein and I met in his office to discuss the Brown and Williamson proposal, and looked at our generic program as a whole.

Q As a manager of Eli Witt, did you have any [p. 23-33] responsibilities to the owners of Eli Witt?

A Certainly. It was part of my responsibility to maximize the earnings of the company.

Q Who were the owners of Eli Witt at that time?

A The owners were the Culbro Corporation in New York. They also owned other distributors.

Q Because of your obligations to your owner, did you at Eli Witt feel that you had an obligation to consider B and W's offer?

A Certainly we did.

Q Did you consider it?

A Yes, we did.

Q Did you compare B and W's 30-cent rebate offer to Liggett's program at that time?

A Yes, we did.

Q Which was more?

A The Brown and Williamson program, by far.

Q In comparing B and W's program with Liggett's program, did you take into consideration Liggett's response to Doral, the incremental program that we talked about earlier?

A No, sir, we didn't at that time. The Doral program was only in a test market, and really didn't affect our overall business.

Q When comparing Liggett's program with B and W's offer, did you take into consideration any retail programs that [p. 23-34] Liggett had at the time? In other words, programs where Liggett helped a retail store such as, for example, stickering?

A No, we really didn't. The retail marketing that was being done didn't have a really direct effect on the bottom line profits other than possibly an increase in sales.

Q Did you consider the retail programs that Liggett was offering to be a price cut to you as a distributor?

A No, sir. It had no effect on our price or the amount of earnings that we had. It was directed at the retail store and the consumer, and had no effect - again, other than possibly increasing sales, it had no effect on the earnings of our company.

Q When you and Mr. Burnstein were considering what to do, what aspects of B and W's presentation did you discuss?

MR. LONDON: Objection to what they discussed, Your Honor. It's hearsay.

THE COURT: All right. Well, he can tell us to what he considered himself in taking part in the decision.

BY MR. RASMUSSEN:

Q When you and Mr. Burnstein were considering what to do, what did you consider in deciding what to do?

A The amount of the rebate ---

MR. LONDON: Excuse me, Your Honor. May I just have a continuing objection to this line of questioning?

[p. 23-35] THE COURT: Certainly. But he's part of the decision-making process, and I think what he considered in the result is not hearsay, in my opinion, so I'm going to overrule the objection.

A The amount of the rebate was taken into consideration. The appearance of the package that -- the fact that we possibly could replace the Filter Lights that we already had in distribution was taken into consideration. The fact that their program -- we didn't have to buy any racks, any advertising materials, was taken into consideration. The entire program was evaluated against what we had as it reflected to the dollar amount that we would add to the bottom line of the company.

BY MR. RASMUSSEN:

Q Did you consider the similarity of the closure seals?

A We considered the similarity of the entire package, not any one particular thing.

Q But including the closure seal?

A Including, yes.

Q Now after your meeting with Mr. Burnstein, did you decide that someone from Eli Witt should call up the owners of your company?

A Yes, sir.

Q Did someone do that?

A Yes, Mr. Burnstein contacted Peter Strauss.

\* \* \*

[p. 23-40] Q Now were there then a series of offers and counteroffers between Liggett and B and W?

A Yes, sir.

Q Do you remember the precise numbers of each of these rounds?

A No, sir. I know that it changed rapidly for five or six weeks.

Q At the time back then, do you know what the numbers were?

A Yes, sir. At the time I was very much aware of it.

Q Was there any pattern to this five-week series of offers and counteroffers? Was it leapfrogging one over the other, and then the other over the other?

MR. LONDON: Objection, Your Honor.

THE COURT: Was there any pattern?

BY MR. RASMUSSEN:

Q Was there any pattern to this rebate war?

A Yes, sir.

THE COURT: Overruled. You can testify.

BY MR. RASMUSSEN:

Q What was the pattern?

A Brown and Williamson would offer a rebate, and Liggett and Myers would respond.

Q Whose rebates were higher?

A Brown and Williamson's.

Q When Liggett responded, did it catch up to B and W?

[p. 23-41] A No, sir. The Liggett and Myers' rebates remained below Brown and Williamson's by seven to ten cents.

Q Do you remember what B and W's final offer was with respect to the shipments of its Filter Lights that would start in mid-July?

A Yes, sir. Seventy-five cents per carton, based on the level of product that we were currently purchasing from Liggett and Myers.

Q Do you remember what Liggett's final rebate offer to you at your volume level was?

A Yes, sir. Sixty-eight cents.

Q Just so I can be as fair as possible, is this 75 cents compared to 68 cents at the same volume level?

A Yes, sir.

Q Now when Liggett had its final 68-cent offer, did that include the 13-cent franchise allowance that we've been discussing earlier?

A Yes, sir. During this period of time from the first introduction by Brown and Williamson until the last offer was made, the requirements for us to buy the racks and the advertising was no longer our responsibility. Liggett and Myers would also supply those the same as Brown and Williamson.

Q So the final 63 cents from - excuse me - so the final 68 cent offer from Liggett was made up of the volume rebate

\* \* \*

[p. 23-44] Doral at that introductory meeting that he had with you in June of 1984?

A I don't remember Doral being discussed at that time, no.

Q So before B and W came in, you were getting 13 cents from Liggett which you were spending on racks and on some types of advertisements, but not co-op advertisements; is that right?

A That's right.

Q And B and W came in, and they offered you what?

A Thirty cents per carton.

Q And Liggett responded and they offered you what?

A They responded with 20 cents per carton.

Q And then who went next?

A Brown and Williamson.

Q And then did Liggett respond?

A Yes, sir.

Q Did Liggett's response equal B and W's?

A No, sir. Liggett's response remained consistently seven to ten cents behind Brown and Williamson's.

Q So when Liggett responded and didn't meet B and W, what happened next in this rebate war?

A Brown and Williamson came back with another rebate offer.

Q And it widened the difference?

A Yes.

Q And what did Liggett do?

A They came back and made another offer.

[p. 23-45] Q Did that close the difference? Did it make it even again?

A It was not even. It brought it up closer again.

Q And then what did B and W do?

A They again came up with another offer.

Q And what did Liggett do?

A Liggett again responded.

Q Did they go up --- Tell me where to stop.

A Well, again, each time that this would happen, Liggett responded and would remain seven to ten cents behind the Brown and Williamson offer.

Q How do you know? How do you remember that?

A Well, at the time, this whole thing was so unusual, the -- I guess the best way I can explain it myself is, if something happens to you in your life that alters your life or alters your lifestyle, you're going to remember it. And this was something so different that it was altering the way we were doing business. It offered us an opportunity to -- as a distributor -- to make a great deal of money that just normally did not happen in the distribution business. This is why I remembered it, the whole introduction.

Q How long did this series of things we've just been talking about go on for?

A Again, five or six weeks.

Q Was that starting in June 1984, continuing through

\* \* \*

[p. 23-77] start again. You've talked about rebates and how Eli Witt didn't pass on those rebates to retail accounts. And in your answer you mentioned manufacturer's list price. What is the manufacturer's list price?

A The list price from manufacturers is the price that we pay for product before any discounts are taken off for cash terms. That type of thing.

Q Now how did you at Eli Witt decide at what price to sell your cigarettes to retail stores?

A The price that we charged the retail store was based on the manufacturer's list price.

Q That was before discounts such as rebates?

A Before rebates, before terms, discounts. It was strictly the list price that determined it.

Q And while you were with Eli Witt, was the manufacturer's price to you - say the Philip Morris price to you for Marlboro or for all the brand name cigarettes the same amount?

A They were the same from all manufacturers. It didn't make any difference which one they came from. They were all the same.

Q So are you saying that a manufacturer would not have a separate price for Marlboro and a separate price of another brand?

MR. LONDON: Objection. It's leading. Asking for [p. 23-78] a conclusion.

THE COURT: It is leading. Sustained.

BY MR. RASMUSSEN:

Q Was the manufacturer's list price for all one hundred millimeter branded cigarettes the same when you were at Eli Witt?

A Yes, sir.

Q Except for generics, since 1980, what has happened to the manufacturer's list price of branded cigarettes?

MR LONDON: May we have a time here now, Your Honor, since this gentleman has been in the industry and out of the industry. So I'd just like the time period in question.

BY MR. RASMUSSEN:

Q Well, while you were at Eli Witt between 1980 and time you left Eli Witt in 1985, what was happening to the manufacturer's list price of branded cigarettes?

A They continued to go up every year.

Q Now when you say --- When you priced --- When you were at Eli Witt, and you sold cigarettes to retail stores, you said you charged a price based on the manufacturer's list price?

A Yes.

Q How did you do that?

A Well, we had the manufacturer's list price, and then we

\* \* \*

[p. 23-80] manufacturers ever compete at the wholesale level in terms of trying to replace one brand of cigarettes with another?

A No, sir.

Q Now you mentioned that manufacturer's list price of cigarettes has gone up, or at least went up when you were at Eli Witt. Is that right?

A Yes, sir.

Q And is it still going up while you've been at Imperial?

A Yes, sir.

Q While you --- In recent years, while you've been at Imperial, how often have the manufacturer's list price for branded cigarettes gone up?

A It's been every six months, or approximately every six months, since I've come back into the industry.

Q Now at the present time at Imperial --- Well, let's also go back to 1984. How often were manufacturers raising the list price of branded cigarettes in 1984 when you were at Eli Witt?

A They were still basically every six months, twice a year.

Q Now in 1984 when you were at Eli Witt, did you anticipate the date when cigarette manufacturers would increase their list prices for branded cigarettes?

A Yes, sir. We attempted to anticipate when their price would go up.

[p. 23-81] Q How did you know what date their price would go up?

A Well, we didn't know the exact date that they would go up, but we knew that they would normally go up about every six months.

So we would try to anticipate when we felt they would go up so we could start buying cigarettes ahead of time.

Q Why did you want to buy cigarettes ahead of time?

A Well, we would build an inventory in our warehouses. And when the price went up, we raised our price and sold the inventory that we had purchased at the old price at a higher price making larger profit.

Q And is that happening at Imperial Tobacco today?

A Oh, certainly.

Q Was there ever an occasion when you were at Eli Witt where you bought ahead, anticipating a price increase, and the price increase didn't take place?

A No, sir. The only mistake I made was not starting buying soon enough a couple of times.

Q Why was that a mistake?

A Well, if I had started buying sooner, I would have had that much more inventory and would have made that much more money for the company.

Q Now how did you actually find out when a manufacturer increased the price of a branded cigarette when you were at Eli Witt?

[p. 23-82] A We would receive a Mailgram from the manufacturer, notifying us that the price increase and the new list price on their brands.

Q And say you got --- Did you ever get a Mailgram from R.J. Reynolds?

A Certainly.

Q And let's assume R.J. Reynolds was first. When you got a mailgram from R.J. Reynolds raising the manufacturer's list price for the Reynolds cigarettes, what did you do?

A We immediately raised our price on all cigarette brands that we had in the warehouse.

Q Just the Reynolds' brands?

A No, sir. Every brand. All manufacturers' brands.

Q You mean you raised the price of other manufacturers' brands even before they sent you a Mailgram?

A Certainly.

Q Why?

A Well, we knew that within hours, if not a few days, we were going to receive a Mailgram from the other manufacturers. They always followed suit. They've always been the same price. Never any price differential.

Q Let's turn back to the time period when you were a retailer. Did you have responsibility for setting the retail price of cigarettes?

A Yes, sir.

\* \* \*

[p. 23-94] THE COURT: Yes, sir, up until that question [sic]. The two previous ones were repetitive. But let's see if we can finish up on this direct here before lunch.

MR. RASMUSSEN: We should be able to, Your Honor.

BY MR. RASMUSSEN:

Q Is Philip Morris now making black and white generics?

A Yes, sir. They are.

Q Is Philip Morris - is the Philip Morris black and white generic package similar to your - to the Filter Lights' package that you had when you were at Eli Witt?

MR. LONDON: Objection.

THE COURT: Overruled.

A I've not seen any that are - that resemble it, no.  
BY MR. RASMUSSEN:

Q What does Philip Morris have on its closure seals?

A They have an eagle on their closure seal, on all of their black and white packages.

Q Was Philip Morris making as big an effort at persuading you at Imperial to market black and white generics as Liggett made when you were at Eli Witt with respect to the Liggett Filter Lights?

MR. LONDON: Objection.

THE COURT: Overruled.

A No, sir. Philip Morris has contacted me at Eli Witt, but they have presented programs on a contract basis for [p. 23-95] private label. They appear to be more interested in private label ---

THE COURT: Well, sustained to your speculation about what Philip Morris's intent is.

BY MR. RASMUSSEN:

Q With respect to what you observed to the black and white generics, how does Philip Morris's effort now with its black and white, not its private label, compare with Liggett's effort that it made when you were at Eli Witt with those Filter Lights?

A They made no presentation to me on just buying black and white. It's only been on a contract basis for a private label.

Q Does Reynolds now have a black and white generic?

A Yes, sir. I understand they do. I have not seen it.

Q Was Reynolds making as big an effort to persuade you at Imperial to buy their black and white as Liggett made with respect to its Filter Lights?

A I've never seen it. It's never been introduced to me.

Q Are you aware of what has happened to the price of cigarettes since B & W has come into the generic market?

A I'm sorry. I didn't understand your question.

Q Are you aware of what has happened to the price of cigarettes, in terms of whether they've gone up or down, since B & W's generics came into the market?

\* \* \*

[Excerpt Of The Trial Testimony Of T. Sandefur]

[p. 26-5] (Jury in at 9:40 A.M.)

THE COURT: Good morning, ladies and gentlemen. You will remember yesterday that Mr. Eads was on the stand, and we're going to finish with Mr. Eads this morning, I am confident.

So, Mr. Eads, if you'll come back to the stand.

And, Mr. London, I believe you have a few more questions for Mr. Eads?

MR. LONDON: Yes, sir. Thank you, sir.

CLARENCE EADS, PLAINTIFF'S WITNESS,  
PREVIOUSLY SWORN  
CROSS EXAMINATION (CONTINUING)

BY MR. LONDON:

Q Good morning, Mr. Eads.

A Good morning, Mr. London.

Q Mr. Eads, I want to just clear up a few little odds and ends. First, it is true that it was your observation that as of December 1985 there was more price competition in the cigarette industry than there was before June of '84?

A In December 1985?

Q Yes, sir.

A Yes, sir, from observations that I had at the time at the retail level stores that I frequented, yes.

Q Now, sir, one of two clean-up questions on that meeting in June. You testified that when you walked into the meeting with Bores and Bolding, you saw the packs on the table at

\* \* \*

[p. 27-108] approval of Brown and Williamson's plan?

A No, sir. We would not be required to ask Mr. Bruell for approval. No, sir.

Q Well, I didn't ask you if you were required. I asked you did you ask Mr. Bruell for his approval?

A No. We had discussions with Mr. Bruell. We certainly would like for Mr. Bruell to support our position, but it wasn't required that Mr. Bruell approve what we, as Brown and Williamson, were doing.

Q Did you need anybody in London to approve whatever Brown and Williamson wanted to do, Mr. Sandefur?

A Absolutely.

Q Who?

A Well, initially we needed approval and agreement from Mr. Gerald Dennis.

Q Now who was Mr. Gerald Dennis?

A Mr. Gerald Dennis was, I believe, vice chairman of BAT Industries.

Q And BAT Industries is the public limited company of which BATCO is a subsidiary? Is that right?

A That's right. But Brown and Williamson would need BATUS which is U.S. approval. That's our first --- That's the reason I asked about what are we talking about. A direct line relationship here.

The way it worked is that we would need BATUS approval. . . .

\* \* \*

[p. 27-177] price for a pack of cigarettes. If it's banded together on buy one, get one free, the consumer knows that that's a value. It's half the price.

Q You told the press, July 25, 1985, one key on the cash register rang up all cigarette sales, didn't you, Mr. Sandefur.

A I did, yes.

Q Yes, you did.

A That's correct. And I didn't tell the press - because I didn't think it was important, I didn't tell the press that there are buy-one-get-one free's out there that represent a price value to the consumer. I was making a general statement.

Q And you were talking about value for money cigarettes and price values for the consumer at this press conference, weren't you?

A That's correct.

Q And you didn't think all of the buy-one-get-one free's and all the tape-on's were important?

A Yes, I think they're very important.

Q Well, you just said you didn't, and that's why you didn't tell the press.

A I didn't think that it was important for me to go through the entire marketing situation in the United States with the press corps. No, I did not.

\* \* \*

[p. 28-76] testify to.

THE COURT: All right.

A It deals with how this was being done. It was being done through the real list price of generics to major accounts - discounting from list, from price through various discounts ---

BY MR. HOGELAND:

Q Would you tell us what page you're reading from?

A On page 18. Through various discount schemes and promotional allowances. So what they have done was they had gone to the wholesale trade through their rebate program and done just this.

Q Done just this?

A Yes.

Q Widened the price differential between branded and generics. Is that right?

A What they had done is, they knew that some of these rebates were being passed on. Yes.

Q Well, they lowered the list price, didn't they?

A They lowered the list price. When we came in, we had the same list price as they did.

Q Yes, and all the time from this period - December '82, July '83, December '83 - when the rest of the industry, including Liggett, raised prices on branded cigarettes, Liggett and Myers chose not to raise prices on their

\* \* \*

[p. 28-81] A Right. It also says "Military Separate."

Q It also says "Military Separate."

A And the reason military is separate is because the military doesn't allow rebates. So Liggett and Myers had a lower list price in military because they didn't allow the rebate scheme. The government doesn't allow that.

Q And they don't allow value discounts, do they?

A That's correct.

Q And in the military Brown and Williamson came in with price competition, didn't it?

A We matched what Liggett and Myers was doing. Yes.

Q You lowered the list price below what Liggett and Myers' was, didn't you?

A We came in at, I believe, sixteen seventy-five. I believe that was the figure.

Q But your plan before Doral came in was to lower the list price, wasn't it?

A I don't recall that.

Q You don't recall that?

A That's right.

Q Now my question was that the program included structuring terms and discounts based on volume and exclusivity. Is that right?

A Yes, that was what Liggett and Myers had done. Liggett and Myers had set the ground rules for competing in this [p. 28-82] category, and when Doral came in they recognized that. And when we followed Doral we recognized that. Doral had the volume rebates - five volume rebates as well.

Q Now it says here on number two "Five Levels of Rebates." Is that correct? Or discounts as they called them then?

A That's what that says. Yes.

Q Well, when B & W came into the generic business at the end of May 1984, it came in with five levels of rebates, did it not?

A That's right. We wanted to have some people that did less than the two hundred and fifty to participate in our program. Yes.

Q And that's the reason you had five levels so people below two fifty could participate, Mr. Sandefur?

A I'm sure that was part of our thinking at that time. We thought that if we had different levels, it would encourage the direct accounts to take on our brand and to encourage them to move to a higher bracket. That's why you have different prices in the bracket so that they can - as their volume increases, they can participate in the higher bracket.

Q My question was, when B & W entered the generic cigarette business ---

A We had five brackets.

Q You had five levels of volume rebates just as was

\* \* \*

[p. 29-186] A I introduced the brand, yes, sir.

Q And at that time, it was very successful. Is that right?

A Yes. It was relatively successful. It declined, however.

Q And then here in 1984, Reynolds relaunched Doral at generic price. Was that a different cigarette, Mr. Sandefur?

A Yes, sir. It was a totally different cigarette.

Q And it was also priced at the same list price as Liggett and Myers' generics. Is that right, Mr. Sandefur?

A I believe that's correct. Yes, sir.

Q And then it says, "As anticipated in B&W's March document, RJR has launched a generic priced product line as a first priority response to generics." Now that says that Reynolds' repositioning of Doral was a response to Liggett and Myers' generics, doesn't it, Mr. Sandefur.

A That's what it says, yes, sir.

Q And then it says, "This action flows from RJR's stated policy to be represented in all major segments of the category. They further believe - contrary to our analysis and data - that the existing awareness and good will of an established brand will give Doral a point of difference in superiority versus black and white and private

label." Now, Mr. Sandefur, what was B&W's analysis and data that was contrary to that belief of Reynolds?

\* \* \*

[p. 30-25] excess of what it cost you to make, right?

A We have a pro forma that we'll get to in a moment. Yes that's correct, yes.

Q So Brown and Williamson's variable margin increased from \$2.91 a thousand in 1972 ---

A Right.

Q --- to \$8.78 a thousand in 1981?

A Right.

Q An increase of over 200 percent?

A That's correct, yes, sir.

Q Then, "In 1982, the industry became much more aggressive on the pricing front." Now what does that mean, again, that - we talked about this yesterday - what does becoming "more aggressive on the pricing front" mean?

A The industry - and when I say "the industry," I'm talking about all manufacturers in the industry - were taking price increases more frequently, and the magnitude of the increase was greater.

Q So that here when you use the idea of aggressive pricing, you mean increasing prices ---

A In this case ---

Q --- more frequently and by greater amounts; is that right?

A In this case that's what we are referring to, yes, sir.

Q And then it says, "Fueled by a 100 percent increase in the federal excise tax."

[p. 30-26] A Yes.

Q In other words --- What does "fueled by" mean?

A If you throw gasoline on a fire, that's fueling it. That makes it - it fuels it, yes.

Q The 100 percent increase in the federal excise tax fueled the industry's becoming more aggressive on the pricing front; is that what that means?

A Yes.

Q And Brown and Williamson's variable margin then increased from \$10.78 in 1982 ---

A Right.

Q --- to \$12.61 per thousand in 1983 as a result of this aggressive pricing; is that right?

A That's right. As if Philip Morris, or R. J. Reynolds leads a price increase, as we've discussed before, and the wholesale trade takes everyone's price up immediately, that means that you raise the price and it fuels the increase, certainly.

Q And this compares 1982 variable margin with 1983 variable margin; is that right?

A That's correct, yes, sir.

Q But then this prior sentence, your variable margin in 1981 was \$8.78 a thousand, right?

A That's correct.

Q And that already by 1982, just one year later, it's up to [p. 30-27] \$10.78?

A That's correct, and I ---

Q So it went up \$2.00 from '81 to '82; is that right?

MR. NORWOOD ROBINSON: Let him finish.

A That would --- Yes, that would be what this calculation would indicate. I would also add that I can't tell you what our competitors' margins did. They may have gone up a little less than that, and then in some cases I would suspect they went up more than that.

BY MR. HOGELAND:

Q Brown and Williamson's went up?

A In the case of Brown and Williamson, that's what our margins have done during this period, yes.

Q Including a \$2.00 increase from 1981 to '82, and an almost \$2.00 increase from '82 to '83, right?

A Yes, sir, that's correct.

Q Now those variable margin increases were all based on full revenue products; is that right?

A Regular-priced products, yes.

Q Those are full revenue branded cigarettes, as we call them here?

A Winston, Marlboro, Kool, L & M.

Q Brown and Williamson's margins are based not only on Winston and Marlboro?

A No, that's correct. Pardon me. I misunderstood your

\* \* \*

[p. 30-75] the two thirty-five which would have been five point one million dollars.

[A] I would further point out that while this is the Brown and Williamson recommendation, the financial aspects of the Brown and Williamson recommendation were not accepted by BAT or BATUS. We were, in fact, required to make a profit. So the idea that while we've got zeros across there, this was not accepted by our parent company.

Q But you say on this two thirty-five line that that is a reserve for either trading profit or additional trade allowances. Is that right?

A Yes, and we believe ---

Q And that reduces to zero the bottom line.

A And that's purely a pro forma calculation showing in our recommendation -- showing what would happen. We said we would be prepared to take it down to break-even, not below break-even but to break-even. That was why it shows that that way. We have a reserve for trading profit which can be used for trading profit or additional trade allowances.

We didn't know at the time how much we would have to spend. We had hoped that we wouldn't have to spend more than a dollar sixty-five in terms of trade allowances in order to get into the business. But we certainly intended to make money.

And as you see, in 1985 we had forty-three million

\* \* \*

[p. 30-80] found when we entered the market would remain the same. [A] The spread that Liggett and Myers had, through a price increase in March, had gone to. That's what we were saying would be maintained.

Q And you wanted to manage the category growth by preventing an increase, didn't you?

A Well, Mr. Hogeland, the only time Brown and Williamson ever tried to lead a price increase in the value-for-money segment, we didn't make it stick and had to roll it back.

Q Mr. Sandefur, you wanted to talk about a footnote on the chart in the May 15 document.

A Right.

Q Where you wanted to say that you were going to maintain the price spread at thirty-five percent. Is that right?

A I said that was the assumption. I didn't say that we were maintaining the thirty-five percent price spread. I said, for the purposes of the document that we look forward to BAT, this was the assumption that we made regarding pricing.

Q That it would be maintained the same?

A For the purpose ---

Q I'm sorry.

A For the purposes of this proposal. That was the financial assumption that we had given our finance

department to calculate the pro forma P & L on our recommended entry. . . .

\* \* \*

[p. 30-121] Q And we had here, Mr. Sandefur, a line called "Full Variable Margin Rate per Thousand." Is that right?

A It says "Variable Margin Rate per Thousand." Yes.

Q Variable Margin Rate Per Thousand 1984 was \$4.65. Is that right?

A That's correct, yes.

Q So if indeed Brown and Williamson responded to probable L & M counter offers by increasing volume discounts up to full variable margin, then this trade allowance line, which is a rate per thousand of \$1.65, would change, wouldn't it?

A That's correct, yes.

Q And that would change to \$4.65, wouldn't it?

A That's correct, Mr. Hogeland. At the bottom of the chart where we are talking about Reserve Available Trading Profit ---

Q Down here?

A Yes. That would mean that you take out everything else. That would bring us down to zero. But I would point out that while this was a recommendation that Brown and Williamson made, BAT did not approve, this and on May 22, 1984, we were advised by BATUS of

what B-A-T would allow us to do and what we were told, that this was ---

MR. NORWOOD ROBINSON: Your Honor, I move to strike this answer. The witness is not responsive, and it's going in to hearsay.

\* \* \*

[p. 31-52] its share of this segment."

A Right.

Q Now that is the same objective that Brown and Williamson documents talked about a year earlier, is it not? Reducing the spread between generics and full-priced production?

A As I indicated, as the spread widened and the financial data that we had in our assumptions assumed some thirty-five percent spread, that we believed that we would have an opportunity to take a price increase. And at this particular point in time, if memory serves me correct, the price was -- prior to the June increase -- the spread was some forty percent.

After the June price increase -- because of the regular-priced products taking a price increase -- it moved up to forty -- some forty-two percent. So we thought there was an opportunity for us to take a price increase. We weren't living up to the commitments that we had been given by BATUS in terms of our profit objectives, and we thought there was an opportunity for that. Yes.

Q And what you said was that you would hope to reduce the spread. Is that not right?

A Yes.

Q And then you say, "B & W's presence within the segment appears to have resulted in reduced consumer advertising by Liggett and Myers and a slowing in the segment's growth [p. 31-53] rate." Is that right?

A As I've testified earlier, yes.

Q And isn't that what B & W set out to accomplish, slowing the segment's growth rate, Mr. Sandefur?

A I believe we've discussed that many, many times over the past few days.

Brown and Williamson or no other tobacco company in the industry can tell the consumer what to do. We've talked about what products we would introduce, but the fact of the matter is that the consumer makes those decisions.

The decision that Liggett and Myers made was their decision with regard to changing the advertising.

Q And this is Mr. McCarty's speech that you're suggesting he make, is it not?

A That's what we were suggesting. Yes.

Q And you're suggesting that he say in the speech exactly what your 1984 documents say, that B & W's presence within the segment resulted in a slowing of the segment's growth rate. Is that right?

MR. NORWOOD ROBINSON: Objection.

THE COURT: Overruled.

A The recommendation speaks for itself, Mr. Hogeland. That was our view at the time. We knew that Doral

was growing very, very rapidly, but that was our - that's what we said. Yes.

[p. 31-54] BY MR. HOGELAND:

Q Well, in March of 1985 - excuse me - April of 1985. You say Doral was growing very, very rapidly?

A In March of --- No.

Q April of '85.

A No, because - Excuse me. Yes. Doral was growing in April of 1985.

Q Was it growing very, very rapidly?

A Well, it was showing growth.

Q But it wasn't growing as fast as B & W's generics 1985, was it, Mr. Sandefur.

A I believe it was, Mr. Hogeland, if memory serves me correct. I may be remembering incorrectly. I remember in 1984 Brown and Williamson shipped some two point two billion sticks, and I believe R.J. Reynolds shipped two point one billion sticks in 1984.

And certainly Doral today is the number one brand value-for-money segment, and it was growing - yes - during this period of time.

Q Well, you testified that at this time - April of '85, Doral was growing very, very rapidly, didn't you, just a minute ago?

A That's what I said. Yes.

Q And was B & W generics growing very, very rapidly, Mr. Sandefur?

[p. 31-55] A No. I wouldn't characterize B & W's generics as growing very, very rapidly. We were showing progress in 1985, particularly at the end of the year in 1985 when we held our price. At mid-year we were able to show some progress in terms of getting distribution at the wholesale level. We did not meet our volume objective in 1985. We fell short of it.

Q But in 1985 B & W generics were growing just as fast as Doral, weren't they?

A I don't recall the relationship.

Q Well, you just testified that in 1985 Doral was doing - growing very, very rapidly.

A Doral was growing. Yes.

Q The same rate as B & W. Right?

A I don't recall if it was the same rate.

Q Now calling your attention, Mr. Sandefur, to what is tab 22 in your binder ---

A Yes, sir.

Q --- Plaintiff's Exhibit 960. Here again we have a memorandum from you to all of B & W's vice presidents. Is that right?

A Yes.

Q And this again is dated April of 1985. Is that right?

A That's correct.

Q And this again is a limited distribution document. Is that right?

. . .

[p. 31-162] that could grow and grow very well, and it has. Yes.

Q And then Mr. Frigon goes on, "As we had anticipated, the rate of growth of this segment has slowed since B&W entered the market with generic products." Now that was a true statement as of July 18, 1985, isn't it, Mr. Sandefur?

A Yes. What had happened was consumers were going over to branded generic price products, yes, sir.

Q And it says, "As we had anticipated." Isn't that right?

A That's what it says, yes.

Q And that is exactly what B&W entered generics in order to achieve, isn't it, Mr. Sandefur?

A I don't understand the question.

Q Beg your pardon?

A I don't understand the question.

Q Wasn't that B&W's purpose in entering generics?

MR. NORWOOD ROBINSON: Objection, sir.

THE COURT: Overruled.

A What was it? I don't understand the question.

THE COURT: Ask the question again.

BY MR. HOGELAND:

Q Wasn't B&W's purpose in entering generic cigarettes to slow the rate of growth of that segment?

A No, sir. I told you, Mr. Hogeland, that the manufacturer cannot slow the rate of growth of any category in this business. The consumer makes that decision.

\* \* \*

[p. 33-103] the chairman of BATUS.

Q Are you telling us, sir, that your superiors told you that you could not go into this market if it was possible for you to have to go down to break-even, sir?

MR. FOSTER: Objection. Leading.

THE COURT: Sustained as to form.

BY MR. NORWOOD ROBINSON:

Q What, if anything, was your understanding, sir as to what BATUS responded to you when you brought that proposition to them that showed a two dollar and sixty-five cent profit with the possibility of having to use all of the profit, if necessary, to meet competition?

A That was unacceptable, and the recommendation on the financial side was rejected out of hand.

Q Sir, would you state whether or not that means that those previous statements, as well as the statement in the May proposal, were no longer operative?

A Yes, sir. Dr. Hughes and I certainly knew that.

Q Did the document, sir, discuss tax savings?

A Absolutely. That plays a very key role in our business. And when you asked me the question earlier and you asked me about the five million, that was part of it. We had another five million dollars that we expected

in terms of our tax savings by entering this business. So that brought us to a ten million dollar level, a little bit more than ten million [p. 33-104] dollars.

Q And that is what you expected or hoped to make on it the first year. Is that right?

A Yes, sir. Yes, sir.

THE COURT: Tell us again where you got the first five million.

THE WITNESS: The first five million.

THE COURT: You were talking about Charlie's dollar or something of that nature.

THE WITNESS: Yes, sir. We're talking two different subjects, Your Honor. What we had said was we were recommending that we take it down to break-even. They told us no. Said, "You've got to make a minimum of a dollar a thousand." That deals with the five point two million.

THE COURT: All right. So there --- If you made a dollar a thousand, the projection would be five point two million.

THE WITNESS: No, sir. No, sir. It wouldn't be. The five point two is what we --- See, Charlie said, "I understand you've got two dollars and thirty-five cents potential in here, but I'm rejecting this, taking it down to zero, the zero line." Said, "You've got to make a minimum of a dollar a thousand."

THE COURT: He said you could go down to one dollar?

[p. 33-105] THE WITNESS: Yes. On this sheet over here.

THE COURT: Right.

THE WITNESS: All right, sir. But on this other sheet, you see where we've got - where it talks about Plan LIFO Decrement. You see that eleven point two million dollars?

THE COURT: Yes, sir.

THE WITNESS: Cut that in half. That's a little over five million dollars. That's what we expected the tax benefit to be to our company. So in total we were looking at the potential - if everything worked as we had planned - spending a dollar sixty-five in trade allowances and everything that went into that, we would expect to make a little over ten million dollars.

THE COURT: All right. Based on the dollar a thousand plus the tax benefit. Is that right? That's where I'm losing it.

THE WITNESS: Okay. Let me see if I can explain it this way.

MR. FOSTER: Your Honor, before Your Honor gets into that, I know Your Honor has not ruled on that Motion in Limine. If Your Honor is going to allow testimony with regard to LIFO Decrement in - into evidence, could we just have a continuing objection to all of that?

THE COURT: Yes, sir. You can. I understand that. [p. 33-106] But, yes, sir. And I am going to let it into evidence.

One more time. Maybe I'm a little --- Everybody in the courtroom may understand it.

THE WITNESS: I apologize, Your Honor. The five point two million dollars would generate two dollars and thirty-five cents. That would have been the profit, you see, on this Bates Number 087072.

THE COURT: Okay. I'm on the wrong page. Okay. I can find it.

THE WITNESS: Based on selling two point two billion cigarettes in 1984 ---

THE COURT: All right.

THE WITNESS: --- and making a profit of two dollars and thirty-five cents, that would generate five point one million, five point one seven zero million dollars.

And Charlie said, "No."

Then we had a zero underneath that, and we had reserve for trading profit or additional trade allowances, that two thirty-five. And Charlie said, "No. I'm not going to let you do that. You've got to make money from the start on this business. I'm not going to let you do that. You've got to make a minimum of a dollar a thousand."

THE COURT: I understand. But that makes your reserve or trading profit then a dollar thirty-five. Right? Instead of two thirty-five?

[p. 33-107] THE WITNESS: No sir. What makes it --- It makes it a dollar thirty-five that we could put -- potentially put up in the -- with the dollar sixty-five, you see, leaving a dollar a thousand profit.

THE COURT: Right. Right. I understand.

THE WITNESS: That was what he said to us.

BY MR. NORWOOD ROBINSON:

Q Is it correct, sir, that what management told you was that that figure -- as His Honor asked -- two thirty-five could only be one thirty-five so that that figure zero would be a dollar?

A That's correct. Yes, sir.

Q In other words, you could only use a dollar and thirty-five cents ---

A That's right.

Q --- of what you thought the profit was going to be to meet competition.

A Yes, sir. That's correct. That's what Charlie asked us to do. But we also knew that we had a substantial tax savings by entering this business. It played a key role in Wally and Tommy Sandefur taking this thing forward. A very key role.

Q Sir, do you have any documents to confirm this one dollar commitment you made to BATUS?

A Absolutely.

\* \* \*

[p. 33-187] activities is neither here nor there. Of course, you can support him by showing that it -- perhaps if necessary, that it wasn't true, but that's another question for another day.

MR. HOGELAND: But this question should be "What did you rely on in making that decision?" rather than, "What, if anything, have you heard?"

THE COURT: I don't see much difference, but let's go back and try it again.

(End of bench conference.)

THE COURT: All right. The question is what he heard and relied on, Mr. Robinson, I believe. Let's restate the question.

BY MR. NORWOOD ROBINSON:

Q What did you hear and rely on in making your pricing decisions on, sir?

A My pricing decisions in August were that I needed to start some stickering because I needed to demonstrate to the wholesale trade and to the retail trade that I believed in my product, and I was going to do something to demonstrate further that I was in it for the long term and stickering was a way that I chose to do that. Because it's very important when you make a call on a wholesaler to be able to tell them that you're going to be doing stickering because it moves product out of his warehouse. It also moves product out of the retailer's warehouse. So that was another pricing [p. 33-188] decision that I had to make in August of 1984. And what I was doing it on - based on was what I believed to be the case that Liggett and Myers was disparaging my product, continuing to use the lawsuit, continuing to try to keep me out of the market, both at wholesale and now at retail.

Q And the lawsuit continued through December 31, 1985, did it not?

A The lawsuit is continuing today.

Q Yes, sir, I know, but just tell me - can I get you past December 31st '85. That's what the magic date is right now. It was in effect then, wasn't it, sir?

A Yes, sir.

Q Okay, sir, and did you continue to take that into consideration when you made pricing decisions?

A Absolutely. From the first day on, after they started doing what they were doing, that was part of the decision process that my mind went through in making my decision. Yes, sir.

Q Can you tell us, sir, whether or not you received reports that customers were cancelling orders that they had placed for your products?

A Yes, sir. They were. They ---

Q And what, if any, reports did you receive as to what the customer was saying - why they were cancelling the orders, sir?

\* \* \*

[p. 34-90] 098506 of Plaintiff's Exhibit Number 15.

A Yes, sir. I have it.

Q This document is dated May 17, 1984, isn't it, Mr. Sandefur?

A Yes, sir. That's correct.

Q And this is after you had made your recommendations. Is that correct?

A That's right, but before BATUS told us what they wanted.

Q But it was after you all had signed off on that recommendation document we just looked at. Right?

A It's not approved until BATUS approves it, Mr. Hogeland.

Q But Brown and Williamson, including you and Dr. Hughes, signed off on that recommendation. Right?

A We had made a recommendation. Yes.

Q You agreed with it. Right?

MR. NORWOOD ROBINSON: Objection.

A We made a recommendation. Yes, sir.

THE COURT: Go ahead.

BY MR. HOGELAND:

Q And under the strategies here that Mr. Christensen wrote down later and sent to Mr. Butler and Mr. Blott ---

A Right.

Q --- it says, does it not, that you're going to construct an initial offer superior to L & M's but at minimal B & W cost and offer it to selected key customers? Isn't that

\* \* \*

[p. 34-153] A Yes, sir. I guess. I haven't done the math. Yes, sir.

Q Well, I have trouble with it, too, when it's that big.

A Yeah.

Q But I believe \$1.00 times two billion two hundred thousand dollars is two million ---

A Sounds right.

Q --- two hundred thousand dollars - I mean, two billion two hundred million is two billion two hundred thousand.

A Yes.

Q And then Mr. Bacon reported to you in round numbers that actually in 1984 you had a four-hundred-thousand-dollar loss as trading profit, didn't you - didn't he? He told me the number 378, which I round to four, is that right?

A All right. Fine. Fine.

Q If we use the round numbers. And that's a total of two million six hundred thousand dollars less than the dollar trading profit in 1984. Is that right?

A Right. But we all knew - Mr. McCarty and all of us knew what we had with regard to being in this business. The bottom line to the company, the tax benefit, implications of being in this business. It was very, very important to us. It was significant to us. Mr. Bruell said in his telex back to us, Mr. Hogeland, and as you know, that even though he had difficulty supporting what our people were recommending, that the benefit of the - the tax benefit may, in fact, change his [p. 34-154] mind. It was

very, very important to us. It was key in what we were doing. We knew that bottom line, we were going to make money.

Q Can you explain that to me, Mr. Sandefur? If you can't explain trading profit, can you explain LIFO decrement avoidance?

A I cannot. I can tell you that it represents a tax savings and it is my understanding if your volume is going up, you get a benefit. And Mr. Bacon can take you through that chapter and verse. He knows it. Ray Pritchard, Wally Hughes before him, and I don't pretend to understand the LIFO decrement, but our finance people understand it inside out, and I hope you are prepared to talk to them about it.

Q Now, Mr. Sandefur, trading profit is what we're talking about when we are talking about Charlie's dollar, right?

A Yes, sir.

Q Now didn't Mr. Bacon report that in 1985, Brown and Williamson's generic cigarettes had a trading profit loss?

A Of seven hundred - about seven hundred and fifty thousand dollars; yes, sir.

Q Wellm [sic] I'm talking about 1985.

A Yes, sir.

Q Didn't he report in 1985, B & W generic trading profit loss of one million six hundred thousand dollars?

A I don't recall that number. I recall 750; and if we're . . .

\* \* \*

---

[Excerpt Of Trial Testimony Of T. Olges]

[p. 35-204] category, raising prices makes profitable so we'll get more competition.' Do you recall having said that?"

"Not specifically."

"Generally, do you recall?"

Answer: "Recollection was it was more of a group consensus that they agreed. Who stated it, I don't remember. But that was the feeling of the group there."

Did you give that answer to that question under oath at your deposition?

A Yes, sir.

Q And the group that you referred to was Mr. Pritchard, Mr. Alar, Mr. Sandefur, and eight other vice presidents or senior vice presidents of Brown and Williamson, isn't that correct?

A Yes, sir. Those at the meeting.

Q Let me ask you one other question. At this meeting, did Mr. Sandefur ask, "Why can't Brown and Williamson go up 75 cents a thousand cigarettes on January 1986 and again on July 1986, which will narrow the gap in generics?" didn't Mr. Sandefur say that at this meeting?

A There ---

Q That's what your notes show, don't they?

A On Page 3 of the notes.

MR. NORWOOD ROBINSON: Objection.

THE COURT: Overruled.

Q And that's what your notes of that meeting show?

[p. 35-205] A On Page 3 of the notes, that's what appears to be there. That's the words there on the page; I don't remember what was said specifically any more than the notes show.

Q But you remember that you wrote down those notes and you put "T.E.S." above that statement, didn't you?

A Yes, sir.

Q "Will narrow the gap in generics." So there was discussion, wasn't there, of narrowing the gap in generics at this meeting?

A There's that comment, yes, sir, out of those notes.

Q And the check mark, Ms. Olges - the check mark means what?

A I don't recall that. I had done something with it, but I don't recall what exactly was the next step after the notes.

Q The check mark means that that is part of the plan, doesn't it?

A I'd have to pull the pricing out they used in the five-year plan, whether it was the exact pricing used.

Q The check mark means that that was going forward into the plan, doesn't it, to narrow the gap on generics?

A The pricing out of this meeting would go into a draft. This is in July, sir.

Q Okay. And in July of 1985, they were going to narrow the gap; that's the plan, right?

A It says, "75 cents first of '86 and July of '86."

[p. 35-206] Q Will narrow the gap?

A From whatever it was at the existing time.

Q Right. And that was the discussion and that was Mr. Sandefur's suggestion, wasn't it?

A It's under his initials, yes, sir.

Q And that means he said it?

A To the notes, yes, sir.

Q No. He said it to the group?

A To my best memory from what I see here in the notes.

Q He said it to the group?

A Yes, it was discussed in the meeting.

Q Would you look down here again where it says, "T. E. S. suggests" and it says, "take pricing \$1.50." Do you see that?

A Yes, sir.

Q That means \$1.50 a thousand, doesn't it?

A Yes, sir.

Q Okay. And up above there, Mr. Sandefur said, "75 cents on 1/86 and 75 cents on 7/86," and that comes to \$1.50 a thousand, doesn't it?

A Yes, sir.

Q A thousand cigarettes is what we're talking about, right?

A Yes.

Q And then if you would go down at the bottom to "Rationale," it says, "bought GPC," correct?

[p. 35-207] A Yes, sir.

Q And that's, again, under "Mr. Sandefur's suggests," isn't it?

A It has another underline; it appears to be under the same section.

Q Okay. And then it says at the end of that sentence, "Hold volume as strategy to manage share of generics." That was again Mr. Sandefur, wasn't it?

A It appears to be, yes, sir.

Q Now, Ms. Olges, when we talked about narrowing the gap - Mr. Sandefur said he wanted to narrow the gap; that refers to the fact the price increase he was discussing would narrow the price differential between generics and full-price brands, isn't that true?

A Yes; to my understanding that's what the reference in the notes mean.

Q So what Mr. Sandefur was telling the group and suggesting and recommending was that Brown and Williamson's plan in its five-year plan was to reduce or narrow the price gap between full margin branded cigarettes and generic cigarettes, isn't that true?

A No, sir. What was recommended was a price increase by B and W that would mathematically have that result. The recommendation and the decision was on B and W's prices.

Q I understand that, Ms. Olges, but the point is he was [p. 35-208] suggesting to narrow the gap. That's what he says ---

MR. NORWOOD ROBINSON: I object, sir. He's asked the question and she's answered it, I respectfully submit, sir.

THE COURT: Overruled.

BY MR. TOPMAN:

Q Mr. Sandefur said and suggested narrow the gap?

A He suggested a price planning; the result by calculation would be narrowing a gap, that he ---

Q And when he ---

MR. MICHAEL ROBINSON: Would you let her finish, please?

A The suggestion and the plans were on the pricing policy; that B and W can control the prices of its own products, and that's how I remember the discussion.

Q You remember the discussion now?

A No; I'm saying these notes --- that the discussion of 75 cents is a price increase.

Q And it will narrow the gap on generics, isn't that right?

A That's the result.

Q And that's what he said?

A There was a statement, yes, that is the result if the prices are raised that way over the five - over the five-year period.

Q And that was a statement by Mr. Sandefur, right?

[p. 35-209] A Yes, sir.

THE COURT: Any more on this document?

MR. TOPMAN: Yes, sir.

THE COURT: More than one or two?

MR. TOPMAN: Yes.

THE COURT: All right. Well, we'll take a break until 9:30 tomorrow morning. Ladies and gentlemen of the jury, tomorrow is Friday and we will take our mid-afternoon break on Friday and recess for the weekend at mid-afternoon on Friday, tomorrow. Until that time remember what I have instructed you previously, and we will see you again at 9:30 tomorrow morning.

All right, Marshal.

(Jury out at 5:00 P.M.)

THE COURT: All right. You may come down, Ms. Olges.

Let's see where we are. Roughly, how much longer do you think you'll be with this witness? I'm not trying to rush you; I want to move it on. But I'm just trying to see whether we're going to finish this witness tomorrow.

MR. TOPMAN: I believe we can finish the witness tomorrow, Your Honor.

THE COURT: On your part, I assume, but I mean what – do you think you will finish mid-morning or before lunch tomorrow?

\* \* \*

---

**[Excerpt Of Trial Testimony Of D. Jackson]**

[p. 39-214] Q What effect, if any, did B and W's volume rebates of the type that you've just described have on Liggett and Myers' position in the market?

MR. MICHAEL ROBINSON: Objection.

THE COURT: Overruled.

A It was a lose/lose situation for us. If we didn't pay the incentives, we lost the volume. If we paid the incentives, it took a tremendous amount of money that we really couldn't afford. So it was lose/lose either way we went.

Q Now in connection with your franchise program, what was the highest bracket in your franchise program for them to earn the 13 cents?

A Five hundred cases per quarter.

Q How did that compare to the Doral volume actuals – what you've described as volume pricing?

A That was also five hundred cases per quarter.

Q Now drawing your attention to Plaintiff's Exhibit 4412A --- I don't know. Can you – let me give you a small copy of it so you can see it better. When B and W first entered the generic cigarette business, what was B and W's highest volume category?

A When they first came into the market, it was 1,500 cases per quarter.

Q Now you say it was 1,500 cases per quarter even though

\* \* \*

[p. 40-9] THE COURT: All right. They are admitted also.

(The documents above  
(referred to were received  
(into evidence as:

(PLAINTIFF'S EXHIBIT  
(NOS. P-3291, P-4079,  
(P-3310, P-4081, P-3376,  
(P-4082, AND P-4369.

THE COURT: All right. Mr. Foster?

MR. FOSTER: Thank you, sir.

DAVE JACKSON, PLAINTIFF'S WITNESS,  
PREVIOUSLY SWORN  
DIRECT EXAMINATION (CONTINUING)

BY MR. FOSTER:

Q Mr. Jackson, I'd like to direct your attention to the time period of June 1985, and do you recall whether or not Liggett and Myers increased the list price of its generic cigarettes at or about that time?

A Yes, we did increase our list price.

Q Why did you increase the list price?

A We had to increase the price to be able to meet the competitive incentives that ---

MR. NORWOOD ROBINSON: Sir, I'm awfully sorry, but I have trouble hearing. Excuse me, Your Honor.

THE WITNESS: I'm sorry.

A Yes, we did increase our price in June of 1985. It was necessary - we were forced to do it - we just had to do it to be able to have enough funds to meet - to stay in the [p. 40-10] incentive battle.

MR. MICHAEL ROBINSON: Motion to strike.

THE COURT: Overruled.

BY MR. FOSTER:

Q Could you not have just decreased the rebates rather than increase your list price in order to take care of that financial situation?

A No, sir. If we had gotten out of the rebate war, we would have been out of business immediately.

Q Mr. Barker has handed you Plaintiff's Exhibit 16, which is already in evidence. What is that document, Mr. Jackson?

A That's B and W Heartland's generic cigarette program.

Q Now the front of the exhibit has a date on it. Could you please read that?

A It's June 4th, 1984.

Q Now, sir ---

MR. FOSTER: Can you show that, please? The date up at the top.

BY MR. FOSTER:

Q Please turn to Page 1 of this Heartland generic cigarettes document. I believe up at the top it has the heading, "Introduction"; is that correct?

A Yes, sir.

Q Now Please read the first sentence under the graph.

A "The generic segment continues to grow and expand."

\* \* \*

[p. 44-41] Q In your opinion, did it hurt the growth of black and white generics, sir?

A No, sir.

Q I want to show you, sir, a document dated - numbered Defendant's Exhibit 1038, dated February the 20th, 1985. Would you read it for us, please, sir the first - See that first bullet?

A Yes, sir.

Q Read to me that second paragraph there, sir. It starts, "Doral."

A "Doral, a direct price competitor to generic, grew from a .3 share in July to a .7 share in December. Doral has probably hurt the growth of generic sales."

And, sir, I certainly agree with that. Generic was growing at a very rapid pace, and Doral came in. Generic continued to grow, but the growth probably wasn't at the level that it would have been if Doral hadn't of come into the market.

Q Sir, this is a memorandum - a printed sheet of paper having to do with Stride cigarettes, doesn't it sir?

A Yes, sir.

Q And that was the cigarette that you put into the market in 1983 or '84 in the value for money segment?

A Yes, sir. It was in the mid-price.

Q Would you look, sir, down in the lower left-hand corner

\* \* \*

[p. 44-108] percent and a \$1.00 per carton spread between the price of generics and branded cigarettes. Is that right?

A Yes, sir.

Q I want to show you a price spread chart for 1984 and '85 which shows the spread got bigger on a dollar percentage basis in '84 and '85, if I may, please, sir.

This document ---

THE COURT: Is this in evidence?

BY MR. NORWOOD ROBINSON:

Q Sir, are you familiar with this document, this board right here, 9007?

THE COURT: Is that a Plaintiff's Exhibit?

MR. NORWOOD ROBINSON: Yes sir. No. I'm sorry, sir. It's Defendant's Exhibit 9007. I apologize.

A Sir, I've not seen it before, if that's your question. No, sir.

BY MR. NORWOOD ROBINSON:

Q Do you know whether or not the figures on it are correct, sir, that reflect the price spread between cigarettes? You're not familiar with this at all?

A It appears --- Yes, sir. That appears to be correct or close to correct.

Q Were you in the courtroom when this was testified to, sir?

A No, sir. I was not. I have not seen that.

\* \* \*

[p. 44-116] prices, if my memory serves me right, up to the four twenty-six either.

So instead of being at 24 percent, it was closer to 40 percent, as you just pointed out in your chart.

Q Mr. Jackson, do you remember testifying, sir, that you had computed the dollar savings between generics and branded cigarettes, based on Liggett's volume, to be about 375 million dollars between 1980 and mid-1984?

A Yes, sir. I remember that.

Q Did you do that computation?

A Yes, sir. I had it done, and I ---

Q I didn't ask you whether you had it done or not. I asked you if you had done it.

A Yes, sir. I had a hand in doing it.

Q Well, who did it, sir?

A I had some of our people here to do it, people who had the financial capabilities, the number capabilities of doing it. And I had a hand in doing it.

Q Well, did you actually made some of the computations?

A I worked with them on the approach that would be taken in figuring it out.

Q Well, what did you tell them to do as far as the way that you were going to work it out?

A To look at what branded prices sold for or what the price was on branded and what the price was on generic. And [p. 44-117] it pretty well had to be done by quarter because of the price increases that took place during those periods of time.

And to total up the amount of difference there was between the list price on branded and the list price on generic for that period of time.

Q The wholesale list price?

A Yes, sir.

Q And I believe you told us, sir, that you figured that 70 percent of that amount of money would have wound up in consumer savings.

A I say in excess of \$300 million. And frankly, I didn't figure out the percentage. But yes, sir. I said in excess of \$300 million.

Q You didn't tell us, sir, that 70 percent of those savings ended up at the retail level?

A I possibly could have said 70 percent, but I specifically remember saying in excess of three hundred million.

Q Well, sir, isn't it true that the savings totaled almost \$3.5 billion if you compute it since Brown and Williamson got in the market?

A The category has grown at a very rapid pace ---

Q Could you answer my question?

A Yes, sir. Yes, sir. You're exactly right. And, sir, it has grown at a very rapid pace to where, as you pointed [p. 44-118] out earlier, it's a 15 share of market.

I would also like to point out, though, if we hadn't have [sic] gotten in this incentive battle that we're in and so forth, it could have very well been like military. Instead of being a 15 share of market, it would have been a 26, which would have been a whole lot greater than that.

Q Sir, the truth of the matter is that the savings to the consumer has been almost eight times as much during the period of time since Brown and Williamson got in the market and it became more competitive than the savings were during the time when you had it by yourself.

A Yes, sir. That is exactly right. And again, I repeat, it would have been a whole lot greater if we hadn't have [sic] got tied up in all this that we're tied up in. It would be like the military which could be probably in excess of five or six billion dollars.

Q You're aware, aren't you, that some time around July of 1985 that GPC decided to have Brown and Williamson manufacture cigarettes under the GPC name instead of Liggett? Right?

A Yes, sir. I'm aware that somewhere in '85 that Brown and Williamson bought GPC's label.

Q You're also aware, aren't you, sir, that Liggett went to customers who had previously bought GPC cigarettes and tried to get them to buy other brands other than GPC?

\* \* \*

[p. 45-15] You understood that, did you not, sir?

A I think the document said that Brown and Williamson had been held out or blocked out of the Kansas City market.

Q And all I was doing was quoting what the document said, wasn't I, sir?

A You had me read the document, yes, sir.

Q All right, sir. Now your salespeople simply reported how successful they had been in Kansas City and Nashville in holding Brown and Williamson out, which means that Liggett had almost all of the business, doesn't it, sir?

A Yes, sir, it would. Until B and W came in the market, we were in the market exclusively with generics.

Q Yes, sir. But you had been successful for several months after B and W got in to almost keep them out of the market, hadn't you, sir?

A No, sir. Within the first two to three weeks after B and W came into the marketplace, they had sold 900 customers and it was 900 of the largest ones around the country.

Q Isn't it a fact, sir, that in the first four months of 1985 Liggett sold over 15 times more generic cigarettes at Liggett than B and W did?

A That is certainly possible. But again, within the first three weeks that B and W was in the marketplace, they had sold 900 customers, which projected to be 3.6 billion for the [p. 45-16] remainder of the year.

Q I want you to look, sir, at Defendant's Exhibit Number 1309 for me. Now this document is dated June the 27th, 1985, and it is form Didi Hunt to Mr. Cohen - Mr. Steve Cohen, right?

A Yes, sir.

Q And it indicates the middle of June 1985 that the latest information showed what the sales were in various markets in the United States, doesn't it, sir?

MR. FOSTER: Objection, Your Honor. I don't think we covered this on redirect.

THE COURT: Well, we're talking about in connection - follow-up on the Kansas City-type question. Overruled.

MR. NORWOOD ROBINSON: Yes, sir.

BY MR. NORWOOD ROBINSON:

Q I want you to look sir - this document says that it was necessary to combat the situation, doesn't it, sir, the third and fourth lines of the second paragraph? Do you see where it says, "I have highlighted the more exaggerated areas and would like to consider working retail headquarters ---"

A Yes.

Q "--- with both Liggett and Gary people in those areas to get a feel for what we can do to combat the situation"?

A Yes, sir.

\* \* \*

[Excerpt Of Trial Testimony Of L. Butler]

[p. 46-54] Q "For the record, referring to the sentence in the top paragraph of Page 4 of the document bearing production number 129925."

A "That's ---"

Q "That's what?"

A "That's the objection that I had, or the disagreements with the document."

Q "In 1984, do you recall that Brown and Williamson sold 2.2 billion units of generic cigarettes?"

A "Yes."

Q "Was that the target that Brown and Williamson had set for generic sales for 1984?"

A "Yes. Well, two billion was the target."

Q "So Brown and Williamson was over its target in 1984?"

A "Oh, that's correct."

Q "Let me show you what has been previously marked as Plaintiff's Exhibit 15---"

MR. FOSTER: Which is Tab 3 in your binder.

Q "--- and ask if you can identify that document."

A "Do you want to know if I recognize this document?"

Q "Yes."

A "Yes. I do."

Q "Is the typed portion of that document a memorandum that you received from Mr. Christensen?"

A "Yes."

\* \* \*

---

**[Excerpt Of Trial Testimony Of W. Burnett]**

[p. 46-165] [A] . . . States, such behavior is not plausible because the firm that engages in the predatory behavior is unlikely ever to get the money back. Because if they do succeed in causing a firm to reduce or diminish its competitive initiatives, and it costs them money, as soon as they turn around and try and get the money back, when they try and recoup it, they're effectively raising the price of the product that they manufacture and sell.

And in most industries, in most markets, as soon as the competitor attempts to raise the price above the level being charged by the other manufacturers, the firm will lose a substantial quantity of its sales to its competing manufacturers and will never be able to get the money back.

So the first step for me as an economist, in carrying out this type of analysis, was to make an assessment of whether predatory behavior likely made sense. Whether you could ever expect to get the money back if you decided to spend it to discipline a rival.

Q Now, Mr. Burnett, you referred to the necessity of a predator to get his money back plus a little more. Is that what you mean by this word "recoupment" and predatory investments plus something else?

A That's exactly right. If you spend money, if you invest money to discipline a rival, you have to recoup that money. You've got to get it back. If you can't get it back, if you [p. 46-166] can't recoup your losses, then the effort doesn't make sense. Now that doesn't mean that firms won't try it every once in a while and make a

mistake and not be able to subsequently recoup, but rational predatory behavior, predatory behavior that makes sense on the part of the firm engaging in the predatory conduct, has to be predicated on the anticipation of getting that money back plus a little more.

Q Now, Mr. Burnett, what information have you reviewed and considered in conducting these analyses?

A Quite a lot, Mr. Hogeland. I have read a number of industry studies and histories of the cigarette industry that stretch back to the turn of the century. I have interviewed executives at the Liggett and Myers Corporation on a number of occasions. I took a plant tour of the Liggett and Myers cigarette factory. I toured a leaf processing facility that takes tobacco leaf and puts it in a form that can subsequently be used to make cigarettes.

I read large volumes of documents and depositions that were produced or elicited in the process of this litigation over the past four years. I have reviewed an extensive quantity of publicly available information from both the Federal Government and from newspapers and magazines and from stock brokerage houses or securities analysts, and I have consulted on a fairly regular basis with Dean Thomas Keller of the Fuqua School of Business at Duke University with . . .

\* \* \*

[p. 46-168] A Yes it is.

Q Now, Mr. Burnett, before you talk in detail about each of your five areas of analysis, could you tell us on your Industrial Organization Analysis, what conclusion,

if any, you reached about whether or not predation in the cigarette industry made sense or was plausible?

A I concluded that predatory behavior on the part of one of the larger cigarette manufacturers in the industry with respect to Liggett and Myers did make sense and was plausible. It is my opinion that prices charged for branded cigarette products exceed the level that would exist in a fully and effectively competitive market.

What that means is that Liggett's introduction of generic cigarettes and low prices and at low margins, and the fact that those low margin and low price cigarettes took sales away from high priced branded cigarettes, had the effect of diminishing the profitability of the larger branded cigarette manufacturers. And it's precisely the fact that Liggett was having the effect of reducing industry prices and causing the larger manufacturers to lose sales of high priced, high margin, high profit cigarettes that provided the incentive for Brown and Williamson to engage in the conduct it subsequently engaged in.

Q Well, Mr. Burnett, without stating your opinion as to Brown and Williamson's intent in entering the generic [p. 46-169] segment, did you come to a conclusion as to whether or not Brown and Williamson's plans for entry, if implemented, could injure competition?

A Yes, I did.

Q And what was that conclusion?

A I concluded, based on my evaluation of their documents, that their corporate documents clearly demonstrate ---

MR. LONDON: Objection, Your Honor.

THE COURT: All right. Sustained to the phrasing of what they demonstrate, but tell your conclusion from what the documents say that they did.

THE WITNESS: I'm sorry, Your Honor. I don't think I understand.

THE COURT: All right. I can understand some confusion there, but when you start talking about what they demonstrate, you're getting close to talking about intent. And intent is going to be a question for these jurors over here.

Now he has asked you if you have reviewed Brown and Williamson's plans for entering the generic market, and you said that you had. And he may ask you more about that.

But, Mr. Hogeland, why don't you try to ask it in a way other than what the documents demonstrate, something to the effect of what the facts are or how they entered. You can rely on the documents as to stating how they entered and what

\* \* \*

[p. 46-171] THE COURT: No, sir. That's the point. You can't testify what they intended. You can testify what they did and what the result would have been if they did what the document said they were going to do, or that they did.

A I concluded that if Brown and Williamson carried out the plan that was described in their documents in 1984, that that program would have had a harmful effect on competition and would have harmed Liggett and Myers.

BY MR. HOGELAND:

Q Now, Mr. Burnett, you said the third area of analysis was prices and costs. What, if any, conclusion did you reach regarding B&W's pricing of its generic cigarettes [sic]?

A I concluded that for the period that I had data for, which ran from mid-1984 through December of 1985, Brown and Williamson priced its generic cigarettes below average variable cost, and that to me, as an economist, I believe that demonstrates their predatory intent in entering the generic cigarette category.

Q Mr. Burnett ---

MR. LONDON: May I have that answer stricken, Your honor? The second part about what he believes that fact yielded as to his view of Brown and Williamson's intent.

THE COURT: All right. Ladies and gentlemen of the jury, you will disregard the witness's testimony as to what their documents or pricing policies demonstrated, and you may. . . .

\* \* \*

[p. 46-198] soon as they stopped investing in the predation and stopped disciplining their competitor, they'd have to try and raise the price of their own carpet in order to make up for the predatory behavior. And as soon as they try and raise the price, that carpet manufacturer is going to begin losing lots of sales to both other manufacturers of carpet, but also other manufacturers of vinyl floor covering and other manufacturers of wood flooring

and other manufacturers of tile and terazzo and anything else you can put on the floor.

So the firm, in carrying out the predatory campaign, doesn't have a reasonable possibility of ever getting the money back in that setting. That's a situation in which predatory behavior is extremely unlikely to make sense or be plausible.

Q Mr. Burnett, what factors in the cigarette industry did you look at to determine whether or not predation in the cigarette industry by Brown and Williamson would make sense?

A Well, again I broke my analysis into a number of general categories. In fact, there are six of them. The first one has to do with the number of manufacturers of cigarettes and the degree of concentration of sales among the manufacturers of cigarettes. The second has to do with the pattern of list price changes and the actual list prices charged for cigarettes. The third has to do with the relationship between changes in the cost of manufacturing cigarettes and changes in the prices charged for cigarettes which may or may not make sense or occur in a competitive market. The fourth involves an evaluation of the actual profitability or the accounting rates of return earned by the cigarette manufacturers. The fifth involves an evaluation of conditions of entry into the cigarette market, or a determination of how easy or difficult it would be for a new manufacturer to begin manufacturing cigarettes. And the final category involves the role – the specific role that Liggett and Myers has played in competition and in the determination of cigarette prices in this

industry over the last ten to twelve, perhaps, thirteen years.

Q Now, Mr. Burnett, these six factors that you've identified, are they factors that are commonly considered by economists in industrial organization market analysis?

A Yes, sir, they are.

Q Looking at the first factor that you analyzed, what does an economist mean by "market concentration"?

A Well, market concentration is a fairly straightforward concept. It simply measures the share of total industry sales controlled by the largest manufacturers. There are really two issues going on in this portion of my analysis. The first has to do with the number of competitors there are, and the second has to do with the extent to which the larger competitors control the bulk of the sales in the industry.

Q Why is the number of firms in the market and the degree [p. 46-200] of market concentration important to an economist in conducting an industrial organization market analysis?

A Well, both features – the number of firms and the level of market concentration – are key aspects – are key features of the structure of any industrial market. And the principal concern here is that when you have many, many firms in an industry – for example, in carpet and floor covering – no single firm has the ability, unilaterally, to change or affect the market price. If they try to raise the price, there are so many competing manufacturers

that they'll lose a lot of sales, and their attempt to raise the price won't be profitable.

However, economists have long recognized that when there are only a small number of competitors, and when sales are concentrated in the hands of a small number of competitors, that those firms may, in some circumstances, be able to tacitly coordinate their behavior and approximate the pricing result that would occur if there was just a single firm monopolist [sic]. That's very important.

To an economist, the evil of monopoly [sic] – the harm to the consumer that results from monopoly [sic] is that prices are held above levels that would prevail if there was lots and lots of effective competition in the market. And the importance, again, of concentration is that when there are only a small number of firms and concentration levels are high, that in [p. 46-201] some circumstances those firms may be able to behave as if they were a single firm monopolist [sic] and raise the prices charged to the consumer. That hurts the consumer.

Q What is wrong with monopoly pricing, to you as an economist?

A Well, there are two aspects to that. First, the consumer has to pay more than the consumer would pay if there was full and effective competition in the market. And there is a more technical criteria which points out that if the price is raised and fewer cigarettes will be sold, and that results in something called the "welfare loss," or a loss in resources to society, because society and the consumer of cigarettes is paying more than they need to. And if the price fell, more cigarettes would be smoked.

And that is the socially optimal combination of price and output. It's down here at the competitive level. It's not up here at the monopoly level (demonstrating).

Q As an economist, what do you mean by effective competition?

A Well, one has to be practical and realistic. Pure and perfect competition is a model that economists sometime set forward which involves having literally hundreds of competitors, none of which have any influence or control over prices. On the other hand, when you get to an industry like the cigarette industry, where there are only six [p. 46-202] manufacturers of competitive significance, one has to set standards that are reasonable to impose on those six manufacturers. They have to realize that competitive initiatives taken by one will have a direct recognizable cognizable affect on its rivals. And the hope is that the firms will compete vigorously and rivalrously with respect to one another, and not coordinate their behavior.

The principal fear is that when there are only a small number of firms, the firms will in fact adopt forms of business conduct which will be more akin or more similar to those that would prevail if there was only a single firm selling the product.

Q Do economists have a term that they use to identify situations in which a group of firms approximate the pricing behavior of a monopoly?

A Yes, there is.

Q What is that?

A Well, there are two phrases that are used, essentially interchangeably. One is "monopoly [sic] power," and one is "market power." And both mean that either the single-firm monopolist or the small group of competitors acting tacitly, without ever getting together, may be able to raise prices above the competitive level and approximate the result of monopolist. Monopoly power, market power, I use them interchangeably. I think most economists do.

[p. 46-203] Q What do you mean when you use the word "tacit"?

A I use the word "tacit" very carefully to distinguish it from overt collusion or overt coordination of firms' behavior. Overt coordination and collusion would involve, for example, getting together in a motel room - two carpet manufacturers getting together in a hotel room and saying, "Let's all raise our price." That's overt collusion, that is absolutely barred under the anti-trust laws. And I use tacit collusion, tacit coordination in distinction from that.

Firms may be able, solely, without ever getting together, without ever meeting in that hotel room, to coordinate their behavior and raise prices and get prices above levels that would prevail in a competitive market. Now you don't have to meet in order to do it. And it's those circumstances in which actual meetings do not occur that are what I mean by tacit coordination or tacit collusion.

Q Do economists have a word, Mr. Burnett, to describe an industry where there are a small number of firms?

A Yes. It's an awkward word for a simple concept. It's called oligopoly. An oligopoly is just the term we apply to an industry where there are a small number of competitors. And the key feature of an oligopoly, to an economist, is precisely that actions taken by one firm in that market will have direct and recognizable effects on its rivals and its competitors. That's to be contrasted [sic] - let's use wheat [p. 46-204] farmers.

If one wheat farmer tries to do something and raise its price, there are so many thousands of wheat farmers in the United States that its neighbor next door is never going to notice the fact or the effect that his attempt to change the price will have. That's a competitive environment. Oligopoly is a small numbers environment where the behavior of each firm has an effect on its rivals.

Q Well, Mr. Burnett, doesn't an oligopoly or an industry with a high level of market concentration or an industry with a high level of market concentration always mean that there is coordination of prices or monopoly pricing or market power for tacit collusion?

A No, sir, not at all. Successfully coordinating behavior tacitly, without ever getting together is tough. It's difficult and, in my view, doesn't occur very frequently. However, it is a predicate or a precondition that has to occur before firms - without getting together - will or may be able to coordinate their behavior and raise prices. It doesn't necessarily lead to high prices, but it is a condition significantly enhancing the ability to raise prices and get the price up to something approximating the monopoly result.

Q Well then, what is the significance of market concentration to you as an economist in your industrial [p. 46-205] organization market analysis of the cigarette industry?

A It is the first step. It is the predicate. Establishing that there are only a small number of competitors and market concentration is high provides the groundwork or the context where then the firms may be able to raise prices. It doesn't say that they'll actually achieve it, but it says they may be able to do it. They may be able to get away with it. So it's just the first step.

Q What do you mean by predicate?

A First step. It's the starting point.

Q Well, Mr. Burnett, how many firms are there in the cigarette industry?

A There are only six firms of competitive significance. There, over the last ten years, have been a couple of very small firms and manufacturers who also distributed cigarettes, but in my view, they played no material role in competition in the industry.

Q Now who are those six firms, Mr. Burnett?

A They include Philip Morris, R. J. Reynolds, Brown and Williamson, American Tobacco, P. Lorillard, and Liggett and Myers.

Q In your experience as an economist, is that a small number or a large number of firms?

A Well, there are certainly industries and markets where there are fewer than six firms or where there are

six firms, [p. 46-206] but in my experience, it is a small number, and it is a number, which standing on its own, raises the possibility that the firms in the industry may be able to coordinate their behavior.

Q Well, now, in addition to the number of firms you refer to the level of market concentration. How do economists measure the level of market concentration?

A Well, there are a number of ways you can go about evaluating market concentration. There are two standard measures. One involves very simple arithmetic which says that you take the market share of the leading four firms and add them up, and that gives you the four-firm concentration ratio. All that tells you is what proportion of total industry sales are in the hands of the four leading manufacturers. The other standard measure of concentration which economists typically rely on today has a long name that doesn't mean much. It's called the Herfindahl-Hirschman Index, and it is simply an algebraic manipulation of the market shares of all of the firms in the industry rather than just the four largest.

Q Well, Mr. Burnett, did you cause an exhibit to be prepared showing the market concentration in the cigarette industry?

A Yes, I did.

Q I show you Plaintiff's Exhibit 4062R, and I ask you if [p. 46-207] that is that exhibit?

A Yes, it is.

MR. HOGELAND: Your Honor, I offer 4062R in evidence.

MR. LONDON: No objection.

THE COURT: Admitted.

(The document above  
(referred to was received  
(into evidence as:

(PLAINTIFF'S EXHIBIT  
(NO. 4062R.

MR. HOGELAND:

Q Now, Mr. Burnett, can you tell us where you got the information - the source of the information - the theory on Exhibit 4062R?

A This data was derived from the Maxwell Reports. I believe these have been discussed previously in the trial. Mr. Maxwell collects data on the cigarette shipments four times a year, every quarter, and compiles it and then publishes it and distributes it to the manufacturers and to the public at large. And this data was derived from the 1982 Maxwell Report.

Q And can you tell us --- You have a line on there called "Four-Firm Concentration." Can you tell us how you got that number?

A Yes. If you look in the farthest right-hand column of [p. 46-208] data, under the heading, "Market Share," you have market shares for each of the six manufacturers and if you just add up the market shares for R. J. Reynolds, Philip Morris, Brown and Williamson and American, the sum of those market shares will be the 88.4 that is displayed down underneath in the first line of data underneath the tally for each firm.

Q And then the four-firm concentration ratio, is as simple as that? You simply add up the percentage market share of the top four firms? Is that right?

A Yes, it is.

Q And is it true, Mr. Burnett, that the higher the four-firm concentration ratio in an industry, the higher the degree of market concentration?

A That's correct.

Q Now you mentioned another measure of concentration levels relied on by economist which is the Herfindahl-Hirschman Index. And what is that, Mr. Burnett?

A Well, the Herfindahl-Hirschman Index is simply another calculation based on this same set of data. If you take the market share that is displayed in the far right-hand column for each company and multiply it times itself or square it, so that for R. J. Reynolds you would be taking 33.4 times 33.4, you get a number - you get the squared number, and I've done that, and it's 1116, and what you do to calculate the Herfindahl-Hirschman Index is carry out that procedure or [p. 46-209] square each of those company market shares and then add them all up the same way you did the four-firm concentration ratio, and the only difference here is that you add the Herfindahl-Hirschman Index for all six manufacturers rather than just the four leading ones. So if you squared each of these market shares and summed them up - added them all up, you would come out with the number displayed down here on the second line underneath the table, the Herfindahl-Hirschman Index of 2,532.

Q So your calculation of the Herfindahl-Hirschman Index that appears on Plaintiff's Exhibit 4062R is also based on the same 1982 Maxwell Report. Is that correct?

A Yes.

Q Now, Mr. Burnett, why did you use the 1982 Maxwell Report?

A Well, the fact is, Mr. Hogeland, that it really doesn't matter which year you choose. I selected, for purposes of illustration, 1982 because there is a comprehensive set of data compiled by the federal government, specifically by the Department of Commerce and the Bureau of the Census. It is called the Census of Manufacturers. It's collected by the Bureau of the Census every five years. 1982, 1987 - it would be collected again in 1992, and at the time this table was prepared, and indeed last week, the data for 1987 was not yet publicly available and had not been published, so since there

\* \* \*

[p. 46-212] manufacturing firms in the United States and, again, that occurs every five years.

Q Well, what industries did you use to compare with the cigarette industries to determine whether or not the levels of concentration in the cigarette industry were high?

A I used two samples. The first sample is that I did a general review of all of the, roughly, 350 industries reported in the Census of Manufacturers to determine, generally, how many had levels of concentration that reached the level that prevailed in the cigarette industry. I then prepared, specifically, tables and computations of

levels of concentration in industries that were classified as producing either food and related products or tobacco products. So, I looked generally at the Census of Manufacturers overall, which has a very, very large sample of industries and then I looked more narrowly at food and kindred - or food and related products - and tobacco products with more specificity.

Q And what did you find when you compared the levels of concentration in the cigarette industry with the total spectrum of some 350 different industries?

A Well, in either test or, as I put it, with either screen or measure against which we want to judge this, there are some industries that are somewhat more concentrated than cigarettes but, in general, cigarettes remain one of the most [p. 46-213] highly concentrated industries in the United States. There are few industries that reach this level of concentration.

Q Well, now, you also said you compared it with a selected group of industries that you identified as food and related products. How many industries are in the Census of Manufacturers that are called "Food and Kindred Products," Mr. Burnett?

A If you combine the broad category of food and kindred products or food and related products with the four industries that are classified as tobacco industries, there are approximately 50 industries in those two classifications.

Q Well, why did you choose the food and kindred products selection of industries in which to make your comparison?

A Well, it really didn't matter. Again, as I said, even if you look at the entire sample of manufacturing industries throughout the United States, there aren't that many proportionately that have levels of concentration that reach the level that exists in the cigarette industry. However, the manufacture and distribution of cigarettes is more similar to - more akin to - the manufacture and distribution of food and related products and other tobacco products than it is, for example, with the manufacture and distribution of copper or steel or automobiles, so I selected food and kindred products because it was generally more representative and similar to tobacco than were many of the [p. 46-214] other industries for which data is compiled.

Q How does the cigarette industry levels of concentration compare with the levels of concentration in the food and kindred product industry?

A Well, whether you rely on the four-firm concentration ratio or the Herfindahl-Hirschman Index measure of concentration, both of which are reported by the Census of Manufacturers, the cigarette industry is one of the most highly concentrated industries among the 50 or so industries reported in those two categories.

Q Are there industries in those two categories with higher levels of market concentration than cigarettes?

A One or two.

Q Do you know what they are?

A Well, if memory serves, chewing gum is one. Breakfast cereal is one that is roughly or approximately as concentrated as cigarettes, and chewing and smoking

tobacco is also highly concentrated. If memory serves, depending on the measure of concentration, there may be one or two more, but out of the 50, there are very few with levels of concentration by either measure that come close to that prevailing in the cigarette industry.

Q Now, Mr. Burnett, you mentioned that your third screen was the Department of Justice guidelines. What are the Department of Justice guidelines?

\* \* \*

[p. 46-223]

(The document above  
(referred to was received  
(into evidence as:

(PLAINTIFF'S EXHIBIT  
NUMBER 4061.

BY MR. HOGELAND:

Q What does Plaintiff's Exhibit 4061 list as an unconcentrated Herfindahl-Hirschman Index, Mr. Burnett?

A It names as an unconcentrated market an industry with a Herfindahl-Hirschman Index of less than 1,000 points. That 1,000 points would be comparable to the 2,532 that appeared on the earlier exhibit about the cigarette industry.

Q And what does the Department of Justice Merger Guidelines list as the Herfindahl-Hirschman Indices for moderately concentrated industries?

A They consider markets with concentration in the range of 1,000 to 1,800 Herfindahl-Hirschman points as being moderately concentrated industries.

Q And what does the Department of Justice Merger Guidelines list as highly concentrated industries in terms of the Herfindahl-Hirschman Index?

A If the Herfindahl-Hirschman Index exceeds 1,800 points, that industry is considered highly concentrated.

Q And what is the Herfindahl-Hirschman Index for the cigarette industry, Mr. Burnett?

A In 1982 as presented on Exhibit 4062R it was 2,532, and [p. 46-224] by 1988, it was measured from the same source, the Maxwell Reports. It had risen to almost 2,800 points.

Q Well, Mr. Burnett, what does the high level of market concentration in the cigarette industry indicate to you regarding competition in the cigarette industry?

A Well, once again, it is the first step in establishing that the firms in this industry may be able to tacitly [sic] coordinate their behavior and approximate the result of a monopolist. That means that they will be able to raise prices above competitive levels.

Q And what does this high level of concentration mean to you as an economist regarding whether or not it would make sense or be plausible for Brown and Williamson to engage in predatory conduct towards Liggett and Myers?

A If the firms in the industry are able to raise prices above competitive levels – and this is the first step in evaluating whether they can – if prices are above competitive levels then the larger manufacturers and in particular, Brown and Williamson, may have high prices and high profits to protect or defend in engaging in predatory

behavior with respect to Liggett and Myers who was introducing low price, low margin products, and causing the average price of all cigarettes sold in the United States to be reduced and to benefit the consumer.

Q Well, you said earlier, Mr. Burnett, high levels of

\* \* \*

[p. 46-226] manufacturers manage to avoid competing with respect to list price. It's one key competitive variable that says they are not competing, and an evaluation of list prices was the second step I embarked upon, or the second step I took in evaluating the plausibility of predatory behavior in the cigarette industry.

Q Well, are prices and patterns, price changes, a subject that economists would normally look to in doing an industrial organization market analysis?

A Yes. It is an issue that has been a subject for analysis for decades – standard tool for analysis.

Q What do you look at to evaluate changes in list prices and patterns of list pricing?

A If I understand your question, I look at the actual list prices.

Q Well, what did you look at in evaluating changes and list prices in the cigarette industry?

A There were several pieces of evidence or information that bore on that. In particular, there has been quite a bit of testimony here in court by Mr. Grant, by Mr. Dey, by Mr. Jackson, and I believe, by Mr. Sandefur, that the cigarette companies tend to change their list prices at about the same time by about the same amount in a

regular manner. So that one large manufacturer – one of the larger manufacturers will raise the price and within, say, two weeks to a month, all of [p. 46-227] the other manufacturers have managed to raise their list price to essentially the same level. This kind of block-step pricing where everybody goes up by the same amount at the same time regularly, now twice a year, mid-year and the end of the year, came out clearly in the testimony. Virtually, everyone who was asked – I'm sorry. Not virtually. I believe everyone who was asked about it testified to the same pattern of list price changes. So that was one piece of evidence I looked at.

There are also documents that were secured from the Brown and Williamson Corporation, which actually traced the history of list price changes going back many years. Documents I had available to me traced the pattern of list price changes from 1966 forward to, I believe, about 1982. And then there was another document detailing a round of list price changes at the end of 1984 and into early 1985. And ---

Q Are you referring to Plaintiff's Exhibit Number 1574 and 796?

A Yes, sir. Plaintiff's Exhibit 1574 is the longer document that presents the history of list price changes as compiled by Brown and Williamson from 1966 forward through 1982 and Plaintiff's 796 presents additional information on the round of price changes that occurred in late 1984 and January of 1985.

MR. HOGELAND: Your Honor, Plaintiff's Exhibit 1574, [p. 46-228] I believe, is already in evidence,

and at this time I would move into evidence Plaintiff's Exhibit 796.

I'm sorry; they're both in. They're both in.

BY MR. HOGELAND:

Q Now does the same company always lead the price increases, Mr. Burnette [sic]?

A No, not necessarily. The leader tends to vary round to round. It tends to be one of the larger manufacturers, Philip Morris, R. J. Reynolds, and I believe, in a couple of instances, Brown and Williamson.

Q Well, what do you mean when you use the word "price leadership"?

A Well, price leadership is a phrase or term of art that was adopted many years ago to describe precisely this kind of block-step pricing – where typically, one of the larger manufacturers will announce a list price increase and the other firms will follow. One leads; the other follows – the others follow. And that's what I have in mind and that's what's described quite clearly in the economics literature.

Q Now are there any other Brown and Williamson documents that you would have used in determining the pattern of list price changes?

A Well, there are a number of documents which get at the same point, but with a little more indirection, not quite as precisely, and they aren't specifically devoted to this [p. 46-229] issue. But, for example, you know, in a fairly extensive Brown and Williamson document with a stamp on it of Plaintiff's Exhibit 1402, that was a Brown

and Williamson Tobacco Corporation CPC or Chairman's Policy Committee presentation. As I understand it, the Chairman's Policy Committee was a committee of BAT Industries, Brown and Williamson's parent corporation in England.

Brown and Williamson put together this big presentation for the CPC in England, and one of the tables in the middle of that document presents average cigarette package or --- Excuse me; cigarette's average price per package by year, and it's labeled "Manufacturer's Price Increase" at specific points in time from 1955 through the mid-1980's. And graphically it shows them effectively all going up at about the same time by about the same amount (demonstrating).

Q Mr. Burnett, what page in Plaintiff's Exhibit 1402 are you referring to?

A It has the stamp number of 194036; it's Chart 11.

Q Is this a copy of that chart?

A Yes, it is.

Q And can you describe to the jury what this heavy black line is?

A Well, that is, as I understand it, the average price per package by year and the little triangles reflect the timing of the price changes and those price changes are labeled [p. 46-230] "Manufacturer's Price Increase," which I take to mean all of the manufacturer's and, indeed, that is generally consistent with the pattern of price changes as reflected in the Brown and Williamson documents I described earlier as chronicaling [sic] each of the Brown's price changes for a long period of time.

Q Now, Mr. Burnett, I show you Plaintiff's Exhibit 236 and ask you if you can tell me what that is?

A Plaintiff's Exhibit 236 is a document -- a report compiled periodically that is compiled or -- excuse me -- was compiled periodically by Brown and Williamson called the "Domestic Competitive Analysis" and it contains a great deal of information on each of the manufacturers of cigarettes and a lot of data on market shares and sales and new product introductions and the like. It's basically market research updated periodically by the staff at Brown and Williamson.

Q Is there anything in that document that indicates to you the pattern of list price changes in the cigarette industry?

A Yes, I believe there is.

Q I suggest you look at the last page.

A Thank you.

Q Can you tell us that page number?

A The page number has a stamp of 264467.

Q Is this a blow-up of that page, Mr. Burnett?

A Yes, it is.

Q Can you tell us what this chart shows with respect to [p. 46-231] your analysis of list price changes in the cigarette industry?

A Yes. In January of 1983, there was a doubling in the federal excise tax charged on cigarettes where the tax increased from 80 cents per thousand cigarettes to a

dollar sixty per thousand cigarettes. And what happened was that after they became aware of the anticipated tax increase that would go into effect just after the first of the year in 1983, each of the manufacturers began to anticipate the price or the tax increase and, correspondingly, started raising list prices to cover the tax increase.

MR. LONDON: Objection as to what the manufacturers anticipated, Your Honor, and move to strike it.

THE COURT: All right. Well, unless you have some evidence that you are relying on as to why they did it, you can testify that prices were raised at that time.

THE WITNESS: Yes, sir.

A The prices were raised between August of 1982 and early January of 1983. You can see by looking at the first date line for each corporation that they began raising prices at about August the 26th, with Philip Morris initiating the first price increase. After Philip Morris raised the price in August - on August 26, each of the other firms followed within a period of a couple of weeks and beginning the price change, and what you observe is that although the firms took [p. 46-232] increases at different times and by different amounts between late August and the end of December, by January 3rd of 1983, each of the firms had managed to raise the price by exactly the same amount for king-size cigarettes and hundred millimeter cigarettes.

Q And where did you get that date, January 3rd, Mr. Burnett?

A It's down on the bottom in the second footnote with a double asterisk.

Q Here?

A Yes. Each of those final prices, although they were announced on different dates, became effective according to this document on January the 3rd right after the imposition of the new federal excise tax. So what we have is a window of about five months from August through January of nineteen - August '82 through January of '83 where they raised the price sometimes by different amounts and on different dates, but low and behold, they ended up with the same price and increased the price by the same amount over that long period. So even in the presence of this modest instability in the pattern of list price increases, by the end of the period and precisely when the tax went into effect, they had all raised the price by the same amount and to the same level.

Q Now this is a Brown and Williamson document, is it not, [p. 46-233] Mr. Burnett?

A Yes, it is.

Q And it is headed "FET Price Increase History." What does "FET" mean?

A I believe it stands for Federal Excise Tax.

Q And these price increases along here are what Brown and Williamson called "the history of the federal excise tax price increases," is that right?

A That's correct.

Q Mr. Burnett, what conclusions did you come to with respect to the patterns of list price changes in the cigarette industry?

A List prices for branded cigarettes tend to change by the same amount at about the same time and sell for the same price. And that's a pattern that has existed over many, many years. What this means is the cigarette manufacturers are not using list price differences and rivalry with respect to list price as a form of competition and as a way to try and take business away from one another. They don't compete with respect to list price.

Q Mr. Burnett, do manufacturers and wholesalers anticipate regular list price increases in the cigarette industry?

MR. LONDON: Objection.

THE COURT: Well, you can testify to what they do, what their activities are. Overruled.

[p. 46-234] A There has been testimony here in trial - here in court that --- For example, Liggett and Myers in planning its budget, were forecasting what its revenues and costs will be for the coming year, incorporates in its budget the anticipated price increases. So they, in fact, do anticipate the price increases, and formally put it into their budgeting process.

Further, I believe there's been testimony that wholesalers will often begin purchasing stock up - or quantities of cigarettes prior to the actual price announcements or price increase announcements so that when the price increase comes along, they already have a lot of stock in the warehouse, and what they can then do, or at least attempt to do, is charge the new higher price for all of the cigarettes it has in its warehouse in inventory. That's called taking what's called an inventory gain.

If you're holding that stuff and you only had to pay five dollars for it, and the price increase comes along and it's now worth six dollars, and you can price it at a price reflecting the six dollars, you gain a dollar on everything you have in the warehouse. So the wholesalers do, in fact, according to the testimony, buy in anticipation of the list price increases and in an attempt to take advantage of those inventory gains.

Q Well, Mr. Burnett, does Brown and Williamson [p. 46-235] incorporate anticipated price increases in its budget?

A I believe it does.

Q Now, Mr. Burnett, your analysis is focused on list price competition. Are there other forms of competition in the cigarette market related to price?

A Yes, there are.

Q Can you name some of them?

A Well, there's a long list. There are coupons; there are stickers; there are buy one, get one free ---

MR. LONDON: I'm sorry; I can't hear.

THE COURT: Keep your voice up.

THE WITNESS: Excuse me.

A There are coupons; there are stickers; there are buy one, get one free promotions. There are buy a carton, get a free carton; there are a number of ways that the price to the consumer is reduced by the manufacturer.

Q Does this mean that price competition exists?

A It means that there is rivalry and that the firms do compete with respect to those competitive variables, sure. Stickering is a way to try and take business from your rivals. Buy one, get one free is a way to take business from your rivals. So they are a form of competition and rivalry.

Q Does this mean that the price increases, which you testified are happening twice a year, are used up in these consumer promotions?

[p. 46-236] A Not by any stretch of the imagination. Although there has been an increase in the use of this type of promotional activity over the last four or five years, the increase in that promotional activity has been far outstripped by the list price increases. The prices go up by a lot; the promotional activity, indeed, does go up. But the promotional activity has not gone up by anywhere near the magnitude of the list price increases. Further, those price increases are not warranted by increasing costs, since the manufacturing costs of making cigarettes have remained roughly constant over the last five years.

Q Well, Mr. Burnett, isn't it true that the market shares of the various cigarette manufacturers have changed over time and that those changes indicate the existence of competition?

A Well, the market shares have certainly changed over time. We know, for example, that a key illustration of that is the fact that Liggett and Myers' share in the 1950's was way up here. It was very high (demonstrating), and over a very long period of time, it trended

down. So that by 1979 or 1980 its share was down to less than two and a half percent of all cigarette sales.

Similarly, we know that Philip Morris, from Mr. Sandefur's testimony, that Philip Morris by taking advantage of certain changes in the industry, has introduced some successful new products and built the Marlboro brand over [p. 46-237] time, so that its market share increased quite a lot.

That kind of long gradual change is not necessarily indicative of intense rivalry in competition. If I saw a pattern where shares were changing year to year at the corporate level and going up and down rapidly, that would say that the firms are taking actions to target one another specifically, and to engage in really active rivalry and cause significant instability in their shares.

That's very different from long gradual trends - long gradual changes. And the fact of the matter is, that despite those long and gradual changes, it wasn't until Liggett and Myers was basically pushed to the wall and on the verge of going out of business, that they chose to break with the rules of the game. And the rules of the game said, "no list price competition."

MR. LONDON: I object to this and move to strike it.

THE COURT: You may testify as to what Liggett did without drawing any conclusions from what they did.

THE WITNESS: Yes, sir.

THE COURT: Go ahead, Mr. Hogeland.

BY MR. HOGELAND:

Q Mr. Burnett, did the introduction of Liggett and Myers' generic cigarettes bring about a change in list price patterns?

A The use of --- Excuse me; the introduction of generic

\* \* \*

[p. 47-29] briefly what question you were addressing with your industrial organization analysis and what the first two elements were?

A Very briefly, the industrial organization market analysis is intended to assess the plausibility of predatory behavior in the cigarette industry, whether it makes sense. And the first two features that I discussed yesterday included the number of firms and market concentration in the market as the first issue that I addressed, and the second was the pattern of list price changes that had taken place over a long period of time until Liggett's introduction of generic cigarettes in 1980.

Q And what were your findings with respect to those first two elements ---

A First, the industry ---

Q --- conclusions?

A --- the industry is highly concentrated, and there are a small number of firms. And second, there is a strong pattern of list price leadership, block step pricing with respect to the sale of branded cigarette products over a very long period of time.

Q Now, Mr. Burnett, did your conclusions, a high degree of market concentration in the uniform pattern of list prices and list price changes, indicate to you that cigarette firms are exercising monopoly over market power?

[p. 47-30] A They are consistent with the exercise of market power, and they in a sense peaked my interest. They want me to look further, and I did look further and assess additional evidence and information.

Q What is the next element that you addressed?

A The next thing I looked at was, I basically evaluated whether or not the pattern of changes in prices and costs in the industry were consistent with the patterns of changes and prices and costs that you would find if competition prevailed in an industry. If you find abnormal or unusual movements in prices and costs, there is an assumption -- an understanding that the forces of competition are not working effectively in that market.

Q Again, in a competitive market, Mr. Burnett, what happens to prices if costs rise?

A Well, let's go back to the example I used yesterday about carpet, and let's assume that we have lots of carpet manufacturers in the United States and the carpet manufacturers compete with other manufacturers of floor coverings. If the fabric price -- the stuff that goes into the carpet, if the cost of that rises to the manufacturers for all of the manufacturers, then you would typically expect to see the price of carpet being charged to consumers to rise. However, typically the price would not rise by the full

amount of the cost increase, at least not in the short [p. 47-31] run.

What happens is that as costs rise and manufacturers pass on some of that cost increase to consumers in the form of higher prices to cover the increase in costs, the market price to the consumer will go up. But typically it won't go up by quite as much as the increase in costs, because as the price increases, some consumers begin to cut back on their purchases because they can't quite afford it or they don't want to purchase it in the quantities that they did previously. So a portion of that cost increase will be passed on to consumers, but typically not the full amount of the cost increase in the short run.

Q Well, Mr. Burnett, as an economist, what would you expect to find in a competitive market when costs decline?

A When costs decline, typically the manufacturers in that market, in a competitive market, will compete away those cost decreases. In the short run, let's assume the price of fabric or the price of the rayon that goes into a carpet decreases. Well, in the very short run the firms will have increased profits, but the firms in a competitive market will typically compete away in an attempt to take business from one another he [sic] increased profits and the price will fall. So when the costs fall, prices will also fall.

Q Well, Mr. Burnett, what do you as an economist expect to find the impact on prices in a competitive market when demand [p. 47-32] declines?

A Generally, if the demand for a product declines, the price in the market will also fall. Fewer consumers are then willing to pay the same price for the same quantity as they have been in the past.

A kind of simplistic example of that was the supply and demand for hula-hoops in the early 1960's. For a while hula-hoops were very popular, and the demand boomed, and the price was fairly high. A hula-hoop might cost two or three or four dollars. And then all of a sudden the fad went away and the demand for the product declined, and you could buy a hula-hoop, if memory serves correctly, for 50 or 60 cents.

So when the demand for a product declines, the price in the market will also typically decline in a competitive environment.

Q Mr. Burnett, did you do an economic analysis of whether changes in prices and costs in the cigarette industry were consistent with the existence of effective competition, as you have just described it?

A Yes, I did.

Q Well, what did you look at?

A Well, I looked at a number of facts, but I found a key instance of the inconsistency of changes in costs and changes in prices, which in my view would not have occurred if the cigarette industry was a competitive market, was a [p. 47-33] competitive industry.

Q I show you, Mr. Burnett, what is in evidence as Plaintiff's Exhibit Number 7, and I ask Ms. McCarty to pass copies of that to the jury.

Now I ask you, Mr. Burnett – first of all, can you tell us what Plaintiff's Exhibit 7 is?

A Plaintiff's Exhibit 7, as indicated by the fifth page of the document, was authored by Mr. Blott, the senior vice president of Brown and Williamson, on March the 22nd, 1984. And my understanding is that this memorandum was written as a response or proposed response to a telex that was received by Brown and Williamson in March of 1984 by Mr. Eric Bruell of Brown and Williamson's sister company, the BAT Company in England.

Q Now, Mr. Burnett, what does Plaintiff's Exhibit 7 show regarding changes in prices and changes in costs in the cigarette industry?

A Well, the data I relied upon is, I guess, six pages into the document. It's the first table of numbers with stamp number 087136. And implicitly it reports the prices received by and the costs incurred by Brown and Williamson in the sale of their branded cigarette products in 1982 and 1983. The first two columns of data over here in the left middle portion of the page report actual revenues and actual costs for branded cigarettes for 1982 and 1983.

[p. 47-34] Now the key feature of importance here hinges on basically two or three issues. First, you'll note the third set of numbers down, which report under sales revenue the rate per M. That means the rate per thousand cigarettes, or the rate per each five cartons of cigarettes. That's the average selling price for Brown and Williamson's cigarettes in 1982, was \$21.06.

Moving over one column, you see that the average price for Brown and Williamson branded cigarettes in

1983 was \$27.00. Well, that's almost a \$6.00 increase. Well, that's a lot. But what we also know, and I think I discussed it yesterday, is that on January 1, 1983, the federal excise tax for cigarette products doubled from \$4.00 to \$8.00, so that there was an increase in the costs incurred by Brown and Williamson of \$4.00 between 1982 and 1983.

Now based on the pattern of pricing cost changes I described earlier, with that increase in cost you would certainly expect even if a very competitive market some increase in the market price charged for cigarettes. But again, you wouldn't expect a price increase to be – certainly, you wouldn't expect it to be more than the cost increase.

The other factor that has to be kept in mind is that this is also occurring in the context of a stable to declining total demand for cigarettes. The demand for cigarettes had [p. 47-35] leveled off in part because of concerns over health-related issues. So we've got a stable demand curve and rising costs. And in that environment, you wouldn't expect the price increase to fully reflect the increase in costs.

The surprising feature here is that the prices actually went up by almost \$6.00, confronted with an increase in costs of only \$4.00. That, to me, peaked my interest. It's inconsistent with the existence of effective competition in this market. Prices are going up by more than the increase in costs.

Now just to make sure that something else wasn't going on here that would motivate that \$6.00 per thousand increase, I went a little further down the page. And

although it's kind of an indirect calculation, I can calculate to the penny the factory manufacturing costs of producing each thousand cigarettes in 1982 and 1983 from the data that is included on here, and those calculations show that the manufacturing costs per thousand cigarettes increased by only 11 cents per thousand between those two years.

So combining the \$4.00 increase in federal excise tax per thousand with an 11-cent increase in factory - manufacturing costs, we have an increase in costs of \$4.11. Once again, we've got a price increase of almost \$6.00, and once again, that price increase is inconsistent with the existence of effective competition.

[p. 47-36] And I went one step further, and I asked myself, okay, the increase in the tax doesn't justify the price increase. The increase in the manufacturing cost doesn't justify the price increase. Could it be promotional spendings? Could it be an increase in the use of stickers and coupons? And lo-and-behold, not only is that inconsistent with this price increase, but if you look down on the next line where it says specific marketing rate per M, or again, rate per thousand, you see that between 1982 and 1983 the specific marketing expenses, which include stickers and coupons, actually decreased. It didn't increase.

So my conclusion was that in evaluating the taxes, the manufacturing costs, and the marketing expenses, those costs and changes in those costs do not justify or warrant in the context of a competitive market an increase in market price of almost \$6.00 a thousand. I found that change in market price inconsistent with the

existence of effective competition, and it suggests or implies to me the absence of competition and the existence of market power and the ability of the cigarette manufacturers to raise price above competitive levels.

Q Now, Mr. Burnett, you said that you computed that Brown and Williamson's factory manufacturing costs increased by 11 cents a thousand between '82 and '83. How did you do that computation from the table in Plaintiff's Exhibit 7 on [p. 47-37] Page 087137?

A Well, I can do that in a very straightforward manner from three numbers. If we look at 1982, we see that the sales price per thousand was \$21.06, and we know that the federal excise tax during that period was \$4.00. So --- And I also know as a matter of definition from Brown and Williamson's accounting records that variable margin, which is the second line of data down here which yields \$10.78, is defined formally by Brown and Williamson as sales revenues minus excise tax minus manufacturing costs. And that computation, sales less tax less manufacturing costs, yields variable margin.

Well, I know what the sales price was. I know the tax was \$4.00. And I know the bottom line that after manufacturing costs, they earned \$10.78. I can infer what the manufacturing cost was to the penny, and it came out to \$6.28 per thousand cigarettes, or \$1.26 per carton.

I carried out the same computation for 1983, and I found that --- No, excuse me. The change here was that in 1983 I have a sales price of \$27.00, but now we know that the excise tax is eight bucks, and I know that the variable margin is twelve sixty-one. I can also calculate the manufacturing cost, and it was, in 1983, \$6.39. So the difference

between six twenty-eight and six thirty-nine is the 11-cent increase over that year in factory manufacturing costs.

[p. 47-38] so I can infer as a matter of definition what the actual manufacturing costs were for the firm for those two years.

Q And you find based on your analysis of that chart that prices were going up more than costs; is that correct?

A Yes, sir.

Q Now is there a later Brown and Williamson document that further illustrates this point?

A Yes, there is. In particular, the document that Mr. Sandefur testified that he took to London in mid-May of 1984.

Q Is that Plaintiff's Exhibit 12, sir?

A Excuse me. Yes, it is.

MR. HOGELAND: And Ms. McCarty is now handing that out to the jury.

BY MR. HOGELAND:

Q What on Plaintiff's Exhibit 12, Mr. Burnett, further confirms your conclusion that prices were rising ---

A Well, if we just look at the first paragraph on the document on the first page under background, and you refer down to the second to the last sentence in that paragraph that begins "In 1982." It reads, "In 1982, the industry became much more aggressive on the pricing front. Fueled by a 100 percent increase in the federal

excise tax. Brown and Williamson's variable margin increased from \$10.78 per M" -- or per thousand -- "in 1982 to twelve dollars and sixty" -- excuse me -- "\$12.61 per M in 1983."

[p. 47-39] Now those numbers tie exactly to the document we just reviewed. The variable margin on Plaintiff's Exhibit 7 that I just discussed are exactly \$10.78 in '82 and \$12.61 in 1983. Now what struck me as an economist in contrasting the data from PX-7 with the statement in PX-12, Brown and Williamson's final proposal for entering the generic category, is that firms in competitive industries ---

MR. LONDON: Your Honor, I move to strike that: This is not a final proposal, and the witness is now going beyond any sort of expert testimony and is now just making things up. As a matter of fact, he's testifying contrary to the testimony of Mr. Sandefur, and he may not sit there as a paid witness and decide which witness he would like to credit.

THE COURT: Well, he can testify to documents on what he is relying. If this is a document on which he is relying, he may say so. Now his characterization of the document and his understanding may or may not be correct as to whether this was, for example, a final document. But the jury will have to use their recollection of the evidence as to what Exhibit 12 was testified to be by witnesses who testified about it.

MR. HOGELAND: Well, Your Honor, just so the record is clear, Mr. Sandefur himself testified here September 7, 1989, referring to the financial schedules in

Plaintiff's [p. 47-40] Exhibit 12, quote, "This is the company's official position." So I don't think it's correct to say that Mr. Burnett has mischaracterized this document.

THE COURT: Well, if he's relying on that testimony, he may testify. And if the jury thinks that that is not something that he should rely on or that is not a correct characterization of the testimony, they may take that into account.

Yes?

MR. LONDON: What I moved to strike was the phrase "the final proposal," because there is no doubt that this was not the final proposal, and the evidence so contradicts it.

THE COURT: I understand that. All right. That is what I initially addressed. We are now talking about the table.

MR. BARKER: Your Honor, this is in the affidavit in the record in this case.

THE COURT: Well, there seems to be a dispute between the two of you as to whether it was a final proposal.

MR. LONDON: I don't think that there's any dispute about that, Your Honor. I don't want to argue in front of the jury.

THE COURT: I know. Let me see you at the bench very quickly on this one.

(Bench conference on the record.)

[p. 47-41] MR. BARKER: Your Honor ---

THE COURT: Mr. Hogeland just read -- said that Mr. Sandefur testified that this was a final -- the company position, or something.

MR. HOGELAND: Official position of the company, Your Honor.

THE COURT: And your concern ---

MR. HOGELAND: It was the final proposal as characterized by Brown and Williamson in affidavits filed in this case more than once.

THE COURT: You're talking about the whole document or ---

MR. HOGELAND: Yes, sir.

MR. BARKER: From Mr. Butler, Mr. Bacon, and Dr. Elzinga.

MR. LONDON: Really, we were getting into a rhetorical bicker. If he wants to use the table, I didn't object until the witness decided to become the advocate and called it a final proposal. There was testimony by Sandefur that this was before BATUS said no, you've got to have a dollar, you've got to have Charlie's dollar. This was not, said Sandefur, what we went to market with. This was not the final. This was rejected. This was a paper. There were papers in February, there were papers in March, there were papers in May, and this was not the final.

[p. 47-42] Now we can argue that in summation, and I'm prepared to do that. But what I'm trying to avoid now, I don't want to get up and object every time the witness speaks.

THE COURT: I understand.

MR. LONDON: But I don't want the witness to get up there and make credibility assessments and make summations. He was doing just fine, talking about the table, but he couldn't resist. He's been too well trained. So he had to say "the final proposal." That's what I want to avoid.

THE COURT: Yes, I understand that, but let's don't get into that.

MR. HOGELAND: Well, Your Honor, let me just respond to that briefly. There are many affidavits that Mr. London and Brown and Williamson filed in this case, Mr. Butler, Mr. Bacon, which called this, in those words, "Brown and Williamson's final proposal." This economist has studied these documents, and if he comes out with that kind of characterization, it isn't because he is well trained. It's because he's done his homework and read these documents.

THE COURT: All right, sir. I cannot resolve that issue, because I don't have all of the testimony here before me. You're [sic] read part of it, which --- Let's go ahead. He's already testified. I will not strike it.

(End of bench conference.)

THE COURT: All right. Go ahead with the next ---  
[p. 47-43] BY MR. HOGELAND:

Q Now, Mr. Burnett, you referred to the last two sentences in the first paragraph on Plaintiff's Exhibit 12. Is there more in there that illustrates your point that prices - changes in prices and changes in costs were not

consistent with what you would expect to find in a competitive situation?

A Well, the point I was going to make was that firms in an effectively competitive market do not succeed in becoming aggressive on price.

If we go back again to the carpet example and the floor covering example, to the extent that a firm attempts to get aggressive with respect to price and raise it to levels that do not reflect increases in costs, they lose business to their competitors. They do not succeed in increasing margins to the extent that they were increased as reflected by this data.

And adopting a pricing policy which is aggressive and succeeds in raising margins and profits is inconsistent, again, with the existence of effective competition.

Q You were using the phrase "aggressive in price" to mean increase in price?

A In this context, there is no ambiguity about that. The prices between 1982 and 1983 went up by almost \$6.00, and the margins earned by Brown and Williamson, even after taking [p. 47-44] into account changes in manufacturing costs and changes in marketing expenses, increased by about \$2.20. So in this case there is no ambiguity about what "aggressive" means. It means price increases.

Q Now, Mr. Burnett, in addition to these two examples centering around the time of the federal excise tax increase, have you looked at anything else regarding changes in prices and changes in cost?

A Yes, I have. It is not quite as direct. It's more indirect. But I have reviewed all of the Brown and Williamson financial data that may bear on this issue, some of it stretching back to 1974 and extending through 1988, and other data beginning in 1984 through 1988, and yet another set of data beginning in 1983 and stretching through 1988.

And what I find over the period of the 1980's and at least from 1984 through 1988 is that this pattern of increases in the margins earned on Brown and Williamson's cigarettes over that period continued to increase in a manner unwarranted by increases in manufacturing costs; costs, taxes, or promotional expenditures.

For example, we had for 1982 and 1983 an increase in what's called brand contribution from seven eighty-two to \$10.00, as reflected on PX-7. If you look at that same measure of margin for Brown and Williamson's cigarettes through 1988 ---

[p. 47-45] Let me just back up. Brand contribution is formally defined as revenue minus tax minus merit manufacturing costs minus such things as stickering and promotions and rebates. You find that from 1984 through 1988 the brand contribution comparable to these numbers down here increased from 1984 of \$12.21 to 1988 of \$17.38. They continued to increase in a manner unwarranted by increases in taxes, manufacturing costs, or promotional expenses.

So I find that the specific data referred to in PX-7 carries through 1988 for Brown and Williamson's products in general.

Q Now, Mr. Burnett, taking into account the three elements of your industrial organization market analysis that you have discussed, that is, a high level of concentration, the patterns of list price changes and list pricing uniformity, and the relationship between price changes and cost changes, did you conclude that effective competition does not prevail in the cigarette industry?

A I'm becoming more and more persuaded as we add more and more information to that puzzle, and based on these three pieces of information I'm becoming pretty confident that effective competition does not prevail, and firms in this industry both possess market power and exercise that market power.

Q Does that indicate that predation could occur in the [p. 47-46] cigarette industry?

A Once again, if the firms in the industry exercise market power so that prices are held above competitive levels, one of the larger firms in the industry may well have the incentive to engage in predatory behavior in an effort to protect and defend the high prices and profits that are earned on the branded cigarettes.

Q Now, Mr. Burnett, you mentioned additional elements as part of your industrial organization market analysis. Now you testified that you analyzed the profitability of cigarette manufacturers. What do you mean by analyzing the profitability of cigarette manufacturers?

A Well, when firms successfully exercise market power and raise prices above competitive levels, and when they are able to keep those prices above competitive levels for a sustained period of time, a manifestation

- an outcome of those high prices is typically the existence of high profits. The firms earn more on their investment if they are able to maintain prices above competitive levels versus the same period of time.

So one test of whether or not prices are above competitive levels hinges on or is measured by whether or not the profitability of the firms which are believed to exercise market power and raise market price are above the profits of firms that compete within competitive markets. If you've got [p. 47-47] market power, if you've got monopoly power, the profitability of participating in that market will exceed the profitability that will exist in competitive markets.

Q Now, Mr. Burnett, I show you what has been marked as Plaintiff's Exhibit 4067-R, and I ask you, sir, if you can tell us where you got the information that appears on that exhibit.

A This is data on the profitability of firms that are classified as manufacturing food and kindred products in one industry classification, and as firms that are classified as manufacturing tobacco products or who are in the tobacco industry in another industry classification.

Q Well, where did you get the information that's on that exhibit, sir?

A The data is derived from a federal government report currently published by the U. S. Department of Commerce, called a quarterly financial report.

MR. HOGELAND: Your Honor, I move the introduction into evidence of Plaintiff's 4067-R.

MR. LONDON: No objection.

THE COURT: Admitted.

MR. HOGELAND: And I ask Ms. McCarty to pass copies out to the jury.

(The document above  
(referred to was received  
(into evidence as:

(PLAINTIFF'S EXHIBIT  
(NO. 4067-R

[p. 47-48] BY MR. HOGELAND:

Q Now, Mr. Burnett, I show you documents identified as Plaintiff's Exhibit 3933-F, G, H, and I, and I ask you what they are.

A These are copies or pages from copies of the quarterly financial reports.

Q And all of them are published by the United States Department of Commerce; is that right?

A They are currently published by the U. S. Department of Commerce. Until the earlier 1980's they had been published by the Federal Trade Commission, and responsibility for that document changed somewhere around 1982 or '83.

Q Now returning to Plaintiff's 4067-R, can you describe for us what you have displayed on that exhibit?

A Yes, sir. Let me take it in a couple of steps. There are two pages to the document. The difference between the first page and the second page is that the first page measures a rate of profit before corporations pay taxes.

That's why on this heading down here, the third underlined portion, it says pretax return on stockholders' equity. That means it's the profits the firm earns on the investments that individual investors have made in the business in the form of holding stock or in the retained earnings - or in the revenues the firm retains within the corporation at the end of the year and does not pay out in the form of dividends to [p. 47-49] its stockholders.

Q Mr. Burnett, can you tell us what you mean by rate of return or return on equity?

A Yes. The stockholders' equity is the amount of money invested by stockholders in the business. That's to be distinct from bonds that the firms may issue that have a fixed commitment or an interest rate that they have to pay. The stockholders' equity is like holding stock in the company, and it reflects the investment the investors have in the corporation. And it is a rate, because typically the way you measure profitability is it's a measure of income as a function of or divided by the total amount invested in the business.

If all you knew was, for example, that a firm was earning \$150.00, you wouldn't know whether that was a lot or a little without comparing it to the amount that was necessary to be invested in order to get the \$150.00 back. So what the rate of return does, is it takes the income measure and divides it by the investment to get a rate.

Q Well, does it follow, Mr. Burnett, that the higher the rate of return, the more profitable the business is?

A That's right. Let's assume that a firm invests, say, \$1,000.00, or a firm has a total investment of \$1,000.00,

and it earns \$150.00 in income. That would be a rate of return of 15 percent, one hundred and fifty over a thousand.

[p. 47-50] On the other hand, if the firm invested \$2,000.00 and it only got a return of a hundred and fifty, they'd be earning seven and a half percent, and that would be a less profitable investment.

So what this does is it takes the measure of income and divides by the measure of investment. The higher the number for a given level of investment, the higher the rate of return, the more profitable the activity is. That's what these measure. It is a measure of income divided by the investment by shareholders in the corporation. The first page is a before-tax return, it means before the corporation pays its taxes; for example, the corporate income taxes that it owes to the U. S. Federal Government. And the second page is the after-tax return, or it's the measure of income after the corporation has paid its tax obligations.

I selected for comparison industries defined by the quarterly financial reports as being food and kindred product industries, or food and kindred product-related companies, and the tobacco industry category as defined by the quarterly financial report, to compare the relative profitability of firms engaged in tobacco activities and firms engaged in non-tobacco but food and kindred product-type activities.

And the conclusion I reached based on this analysis doesn't much matter whether you look at the first page or the second page. The answer is the same. If we focus just on [p. 47-51] the first page for purposes of illustration

now, you see that firms classified as manufacturing tobacco products had a pretax return on stockholders' equity of about 32 percent for the period extending from 1979 through 1985. Over the same time period the firms engaged in food and kindred product-related activities had a pretax return of 21.5 percent.

What that means is that firms that engage primarily in tobacco manufacture earned about 50 percent more than firms engaged in food and related product activities. If memory serves, I did the calculation, and it was approximately 47 percent more. But they earned more, it's higher. And you get the same answer looking at the second page, and again, the tobacco industry earns 20 percent after-tax return on stockholders' equity, while companies classified as food and kindred product companies earned only 13.6 percent, and again, that's a little less than a 50 percent difference.

What this showed me was that in very gross terms, firms engaged in the manufacture of tobacco products earn higher rates of return, earned higher profits on their investment than do firms engaged in food and kindred product activities.

Q Well, Mr. Burnett, does Plaintiff's Exhibit 4067-R and the data in the QFR's for the tobacco industry reflect the turn on stockholders' equity of only the cigarette activities of the tobacco companies?

[p. 47-52] A No, sir, it doesn't.

Q Well, do the tobacco companies or many of them engage in diversified activities other than cigarettes?

A Yes, and that's the point. When the data is submitted to the Department of Commerce, the Department of Commerce will take a company and put it in one of these industry groups, depending on its principal or primary line of business. So if a company is primarily a tobacco manufacturer, but also has related products, all of the income and assets that are derived from or centered in that company are put in this tobacco category, even though some of them are non-tobacco industries. So this is an average for a corporation. It includes both tobacco-related activities and some non-tobacco-related activities.

Q Well, did you do any analysis to determine whether or not the profitability figures from the QFR overstate the cigarette earnings of each company?

A Yes, I did.

Q What did you do?

A Well, I went to each of the six tobacco manufacturers annual reports, which are reports that each company must file with the Securities and Exchange Commission every year, and which become available to the public and to potential stockholders in the corporations, in an attempt to determine what the relative profitability of the cigarette activities [p. 47-53] of the six major manufacturers - how the profitability of the cigarette activities of the major manufacturers compared to the - compared with the profitability of the cigarette manufacturers' other lines of business or other types of business that they engaged in, to make sure as a first step that this did not overstate the profitability of the cigarette manufacturers.

And quite to the contrary, the data presented here systematically understates the profitability of the cigarette manufacturer. And if what we had was data limited only to the cigarette activities of the tobacco companies, the difference between these two numbers would be even larger. In contrast to the 21.5 percent, if we has [sic] just cigarette activities, this number for cigarettes alone would be more than 32.2 percent.

Q Well, did you do anything - did you limit your analysis to the worldwide cigarette activity reported by the companies, or did you make an effort where possible to limit it to domestic United States cigarette activity?

A To the extent I could, I did both. I looked at the profitability of each line of business for each year from 1979 forward for each of the six cigarette manufacturers, and I looked at the profitability of individual lines of business within those corporations, and found that overall cigarette activities were systematically and dramatically more [47-54] profitable than almost anything else they did in almost every year but not quite.

And then I also looked at the profitability of each company's domestic activities as opposed to its international activities to make sure that somehow the high profits as reflected in their tobacco operations weren't a function of or dependent on their international cigarette sales, their international tobacco activities. And once again, I found that the domestic activities of each of these firms tended to be more profitable than the international or the export activities of each of the firms.

Q Did you consult any other material in your analysis of the profitability and rates of return in the cigarette industry?

A Yes, I did.

Q Would you tell me what some of it was?

A Yes. In a fairly routine manner, several of the large stock brokerage houses like Merrill Lynch and Paine Webber publish reports critiquing or evaluating the lines of business and business activities of major corporations. And one of the exercises they go through as a routine matter is very similar to what I did, looking at the individual annual reports of each company, and they will often break down the returns earned by each company's individual line of business.

Q And, Mr. Burnett, I show you Plaintiff's Exhibit 233, and [p. 47-55] I ask you to tell me what that is.

A This is a copy of a brokerage house report on the R. J. Reynolds industries company, dated April 1983.

MR. HOGELAND: Your Honor, I move the introduction into evidence of Plaintiff's Exhibit 233.

MR. LONDON: May we approach, Your Honor? Again, we were given a list of all of the documents that were offered, and this is not on the list, and I don't know why they do this.

THE COURT: All right. Let's see you at the bench.

(Bench conference on the record.)

MR. HOGELAND: Your Honor, my understanding is that this was on the list sent to them.

THE COURT: Well, what is the Reynolds – what is the Reynolds document going to have to do with it anyway? Plaintiff's exhibits that may be put in evidence --- If it's not in numerical order, it's not on the list. I said if it is in numerical order, it's not on the list.

MR. RINGELBURG: I believe it's on the list, but I'm just trying to find my copy.

MR. LONDON: You can look at mine.

MR. RINGELBURG: You also wrote a letter on the 25th and the 26th.

MR. LEFELL: It doesn't include Number 223.

MR. LONDON: We have a stack of a zillion documents, [p. 47-56] but we never saw this before.

MR. HOGELAND: Well, if it's not on this one, I'm not going to move it into evidence.

MR. RINGELBURG: I don't have my copy of the list with me.

THE COURT: What are we doing? Are you going to say that it was ---

MR. HOGELAND: I'm not going to offer it if I didn't give them notice of it. I mean, the agreement prevents me from it. My understanding is that we did.

MR. LONDON: Are we going to wait while he looks, or ---

THE COURT: Yes, why don't we wait a minute while he looks? Is it at your table?

MR. RINGELBURG: I think it is.

MR. HOGELAND: Well, do you want to take a break now?

THE COURT: Why not?

MR. HOGELAND: Okay.

(End of bench conference.)

THE COURT: Okay. Ladies and gentlemen of the jury, we've got to check one document. And the rest of us have been here since 9:30, so it's probably a pretty good time for a break. If you want to go downstairs, you may do so. And please just leave your documents there at the jury box.

[p. 47-57] All right. Mr. Belvin?

(Jury out at 10:55 A.M.)

THE COURT: All right. Let's take about 15 minutes.

(Short break from 11:05 to 11:20 a.m.)

MR. LONDON: If Your Honor please ---

THE COURT: Yes?

MR. LONDON: Inquiry in the interim has revealed that following the long list of exhibits that they notified us, there is a letter that's dated September 26 that they represent that they telexed us with four omitted exhibits.

While we don't say that we didn't get it, it's just that – it may well be there, and we may well have seen it. It's certainly something that we didn't focus on.

But that's the letter that contains four exhibits. I'm not claiming that we didn't receive the facts. I did review in advance of the testimony scores of exhibits that they said they were going to introduce, and we told them which ones we were going to object to and which ones we weren't.

I've never seen this one before. It's a 38 or 9 or 7 page single-spaced document that is apparently a report from Merrill Lynch on RJR. And it has extremely limited relevance here. It's something that the witness said that he looked at.

[p. 47-58] My suggestion would be to hold it, let us look at it overnight and read it. If we want to go forward with it now, I certainly would object to it on the ground that if it has any probative value or has something on which the expert relied and therefore admissible, but not for the truth of its contents.

The possible prejudicial and accumulative weight of all this stuff with respect to the limited relevance is ---

THE COURT: What is the relevance of this Reynolds document? I mean analysis.

MR. RINGELBERG: Mr. Burnett, in addition to doing his own analysis on profitability, looked at analysts who evaluated tobacco company profitability, and this confirms Mr. Burnett's analysis.

Your Honor, I just wanted to bring your attention to what we did disclose in the November 26 letter which we've used, Exhibit 233, which is also in the pre-trial order, and on October 3rd I sent a letter to Mr. Lefell and to Mr. Robinson, Michael Robinson, which I stated to

confirm my telephone conversation about what their exhibits -- what there are objections to our proposed exhibits were.

I said, "It's my understanding B & W's objections to the exhibit listed in my letters of September 24, 25, and 26 and October 2nd are to only the ones they had informed me about."

[p. 47-59] So they not only got the letter of the 26th; they got my confirming letter which said the exhibits listed in the letter dated October 26, so ---

MR. HOGELAND: And, Your Honor, this document was in the pre-trial order, so their statement that they're never seen it before comes a little late when we have this agreement, when we give advance notice of exhibits we're going to use. We give this to them on September 26. We get a response as to all of their objections, and then they want to hold up in the middle of the examination while they want to read it.

I mean, you know, we've complied not only with the pre-trial order but with all of the agreements that we have here.

And then we have a statement made in front of the jury that we never showed it to them, which is wrong.

And then we have an effort to hold up the examination.

MR. LONDON: Your Honor, perhaps I didn't speak clearly. I thought I said when I first rose that we are not denying receiving the letter. What I said was that they sent up a letter saying they had left off four exhibits from the list that they sent us that I --- I'm not denying we

received it. I don't have a copy of it in my file, but I'm not denying we received it.

[p. 47-60] If you say you sent it, I'm confident you sent it. I don't ask for an admission of service. I don't ask for the certified mail receipt. I say that, in fact, I never focused on it.

Now I've heard Mr. Ringelberg's explanation of why the document is admissible, and I think we ought to go directly to that.

I heard Mr. Ringelberg say that the document is admissible because this is an analysis performed by Merrill Lynch analysts that confirms the witness's analysis. That Merrill Lynch --- So it's offered to prove the truth of its contents. The Merrill Lynch analyst is not here on the stand, is not here to be cross examined. I don't know what he relied on, and I don't know how we could have an unsworn statement by a Merrill Lynch analyst to prove the truth of this analysis.

THE COURT: Well, what he's going to say about this is this is the type of information I relied on? Is that all he's going to say about it?

MR. HOGELAND: Yes, Your Honor. That's exactly the information he relied on, and it is normal for an economist to use this kind of information. He's already testified to that.

THE COURT: Yes. I understand that This deals with just Merrill Lynch. I don't think there's any real [p. 47-61] dispute, as I understand it, as to the tobacco business's profitability from one of the parties; maybe there is. But he can testify, yes, Exhibit 233 is the type of

information stock brokers and analysts rely on. What else is he going to do with it?

MR. HOGELAND: Well, that's what he's going to do with it, Your Honor. And I want to be able to put it in evidence.

THE COURT: I mean, is he going to --- Do you want to talk about the contents of it?

MR. HOGELAND: Yes, Your Honor. Yes, Your Honor.

THE COURT: Well, he can talk about that, and I'll instruct the jury that it's not admitted for the truth of it if there's a problem in that regard.

All right. Let's bring the jury in.

MR. FOSTER: Your Honor, could I bring up one more thing?

This argument, I think, is illustrative of a larger problem that we have, and that is the problem of our speaking objections.

We had the dispute as to whether or not the document that Mr. Burnett was testifying about had been described by Brown and Williamson as their final proposal.

And what I've just handed to Mr. Gordon are the affidavits of no less than four Brown and Williamson [p. 47-62] employees or experts in which the very document that Mr. London said, in front of the jury, there was absolutely no evidence to describe it as the final proposal.

Mr. Butler describes this document as "the final generic proposal." Mr. Bacon describes this document as "I attach a copy of this final proposal as exhibit 1. Brown and Williamson prepared a final proposal recommending," blah, blah, blah, blah, blah.

Professor Weil says, "It's May 1984 final proposal for introducing generics attached is exhibit 1 to this affidavit."

Professor Elzinga described it as "the plan it ultimately adopted."

THE COURT: Well, I do remember now Mr. Sandefur saying, "Yes. This is it."

MR. FOSTER: And he squealed with delight on the witness stand when we - as he said - "we've finally gotten to it."

THE COURT: I remember.

MR. LONDON: I move to strike that one too, Judge.

THE COURT: I remember his testimony in that regard. He was animated.

MR. FOSTER: Indeed. But, you know, I certainly don't --- I'm not trying to say that Mr. London intentionally said it at all.

[p. 47-63] It's just that if we can confine ourselves, if we have a problem.

THE COURT: Well, it's about a draw between the parties on those type of things, and sometimes I will ask for the grounds for it if it can be simply stated and

avoid a bench conference. But otherwise we will try to confine ourselves to making objections.

Now hopefully we will be able to get through Mr. Burnett's testimony the rest of this morning without any major problems.

I'm beginning and have looked at some of the cases that both parties have cited on the question of intent, and we'll try to look at some more of those again during lunch.

All right, Marshal.

(Jury in at 11:25 a.m.)

THE COURT: All right, Mr. Burnett. If you'll come back, please.

All right. Now when we took the break, Mr. Burnett was shown Plaintiff's Exhibit 233, and I don't believe he's said what it was yet. He may have, but I don't know that he did.

MR. HOGELAND: I believe I moved its admission into evidence, Your Honor.

THE COURT: Well, let's see what it is first. If my understanding is correct of what it is and what he did [p. 47-64] with it ---

WILLIAM B. BURNETT, PLAINTIFF'S WITNESS,  
PREVIOUSLY SWORN

DIRECT EXAMINATION (CONTINUING)

BY MR. HOGELAND:

Q Mr. Burnett, can you tell us what Exhibit 233 is?

A Exhibit 233 is a stock brokerage analysis of the R.J. Reynolds Industry Incorporated Company dated April 1983 prepared by Merrill Lynch.

Q Is this the kind of security analysis that you as an economist regularly consult in doing industrial organization market analysis?

A Yes. This kind of report provides general background information on major manufacturers in general throughout the U.S. economy.

THE COURT: Did you use this as some of the material you relied on in testifying?

THE WITNESS: Yes, sir. I find that this confirms the opinions I reached based on other information.

THE COURT: All right. The Court will admit 233 as the type of material relied on by the witness in reaching his conclusions, not necessarily for the truth or falsity of the statements made by Merrill Lynch therein but as a document that Mr. Burnett relies on in giving his testimony.

[p. 47-65]

(The analysis above  
(referred to was received  
(into evidence as:

(PLAINTIFF'S EXHIBIT  
(NO. 233.

MR. HOGELAND: Your Honor, I will ask Ms. McCarty to pass out copies of Exhibit 233 to the jury.

BY MR. HOGELAND:

Q Now, Mr. Burnett, can you tell us what in Plaintiff's Exhibit 233 you referred to in conducting your industrial organization market analysis?

A Yes, sir. There were two general pieces of information that I found potentially important in my analysis.

If we could turn to page ---

MR. LONDON: Could the witness testify when he looked at this?

THE COURT: Yes, sir. If you would, please. You looked at this in preparing for your testimony and reaching conclusions or when?

THE WITNESS: I have seen this report in the past. I don't remember with precision when I first saw it. I reviewed it within the last several weeks in preparing for my testimony certainly, but I recall seeing it in the past. And over the years in working on this case, I've reviewed a number of similar types of analysis on different companies in the industry of a similar nature to this.

[p. 47-66] THE COURT: All right. Go ahead.

A The first piece of information that I found ---

MR. LONDON: May we approach, Your Honor?

THE COURT: Yes.

(Bench conference on the record.)

MR. LONDON: In light of the witness's inability to say that he read this document before he reached his conclusions, I move to strike the exhibit.

THE COURT: Well, he said he's seen it before in preparing for his testimony.

MR. LONDON: He reached his conclusions in 1986.

MR. HOGELAND: He reached his conclusions in 1986. He listed a lot of stuff. He read a lot of stuff then and has continued to do his analysis as he has said.

THE COURT: I will admit it.

(End of bench conference.)

BY MR. HOGELAND:

Q Now as you were answering before the interruption, Mr. Burnett, what is it in Plaintiff's Exhibit 233 that you referred to in conducting your industrial organization market analysis?

A Well, the first piece of information is on the third page of the document which has the page number on it of page 11. And midway down the page there is a table titled "Return on Assets by Line of Business, 1977 through '82." [p. 47-67] And Merrill Lynch carried out an exercise similar to that that I did for a different period measuring the return on assets by operating divisions of R.J. Reynolds for that period of time.

And in scanning, for example, down the column headed "1977" one observes very quickly that the domestic tobacco operations of R.J. Reynolds were, as measured by this return on assets, far more profitable than anything else R.J. Reynolds did in 1977. And that same pattern exists throughout the period.

The domestic tobacco operations of R.J. Reynolds are more profitable than anything else they did, including their international tobacco operations which are reported on the second line of that table.

And looking to the top of the page in the text, Merrill Lynch wrote, "The domestic tobacco business affords, by far, the highest return on investment of any Reynolds activities." And it refers to the table below. "But since volume growth is so low, it does not offer Reynolds enough opportunity to reinvest a significant enough portion of its cash flow in this area."

That reflects the fact that in unit terms cigarette volume wasn't growing, and R.J. Reynolds doesn't have the opportunity to reinvest all of the profits concerning cigarettes back into the cigarette industry.

[p. 47-68] And at this time in R.J. Reynolds' history it was, in fact, diversifying away from tobacco in an effort to use the cash that was being thrown off by cigarettes.

The second point I draw your attention to is on page 19. It's headed "Page 19." And at the beginning of the first full paragraph on that page Merrill Lynch wrote, "The cigarette companies enjoy virtually all of the advantages other than rapid unit growth that any other industry does. They have usually played the part of a well managed oligopoly pricing up aggressively. They have rarely indulged in excessive price promotions for any sustained period."

And then it goes on: "And they face virtually no threat of entry by a new competitor as is often the case in

many consumer product lines for this is a highly technical business. It also requires heavy marketing outlays to gain share."

And then it refers to Brown and Williamson's introduction of the Barclay brand on which they invested a great deal in advertising and promotional activities in the first few years of its introduction.

I found the page 11 data consistent with my analysis, that the returns to tobacco and cigarette activities were highly profitable relative to other lines of business, and the statement about this being a well managed oligopoly and pricing up aggressively are also consistent with the [p. 47-69] observations I made independently with respect to pricing practices and activities in the cigarette industry.

THE COURT: Keep your voice up, please, sir. I'm having trouble hearing you, and I'm sure they are when your back is turned that way.

THE WITNESS: Yes, sir.

A That completes my assessment of that document.

BY MR. HOGELAND:

Q Mr. Burnett, did you look at any Brown and Williamson documents regarding profitability in the cigarette industry?

A Yes. There are several that bear on the issue of profitability of tobacco and cigarettes relative to other lines of business.